

Calendar No. 839

110TH CONGRESS
2D SESSION

S. 1171

[Report No. 110–401]

To amend the Colorado River Storage Project Act and Public Law 87–483 to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2007

Mr. BINGAMAN (for himself and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 25, 2008

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Colorado River Storage Project Act and Public Law 87–483 to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and

infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Northwestern New Mexico Rural Water Projects Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
 7 this Act is as follows:

Sec. 1: Short title.
 Sec. 2: Definitions.
 Sec. 3: Compliance with environmental laws.

**TITLE I—AMENDMENTS TO THE COLORADO RIVER STORAGE
 PROJECT ACT AND PUBLIC LAW 87–483**

Sec. 101: Amendments to the Colorado River Storage Project Act.
 Sec. 102: Amendments to Public Law 87–483.
 Sec. 103: Effect on Federal water law.

TITLE II—RECLAMATION WATER SETTLEMENTS FUND

Sec. 201: Reclamation Water Settlements Fund.

**TITLE III—NORTHWESTERN NEW MEXICO RURAL WATER
 SUPPLY PROJECT**

Sec. 301: Purposes.
 Sec. 302: Authorization of Northwestern New Mexico Rural Water Supply
 Project.
 Sec. 303: Delivery and use of Northwestern New Mexico Rural Water Supply
 Project water.
 Sec. 304: Project contracts.
 Sec. 305: Use of Navajo Nation Municipal Pipeline.
 Sec. 306: Authorization of conjunctive use wells.
 Sec. 307: San Juan River Navajo Irrigation Projects.
 Sec. 308: Other irrigation projects.
 Sec. 309: Authorization of appropriations.

TITLE IV—NAVAJO NATION WATER RIGHTS

Sec. 401: Agreement.
 Sec. 402: Trust Fund.
 Sec. 403: Waivers and releases.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ~~ACRE-FEET.~~—The term “acre-feet” means
4 acre-feet per year.

5 (2) ~~AGREEMENT.~~—The term “Agreement”
6 means the agreement among the State of New Mex-
7 ico, the Nation, and the United States setting forth
8 a stipulated and binding agreement signed by the
9 State of New Mexico and the Nation on April 19,
10 2005.

11 (3) ~~ANIMAS-LA PLATA PROJECT.~~—The term
12 “Animas-La Plata Project” has the meaning given
13 the term in section 3 of Public Law 100–585 (102
14 Stat. 2973), including Ridges Basin Dam, Lake
15 Nighthorse, the Pipeline, and any other features or
16 modifications made pursuant to the Colorado Ute
17 Settlement Act Amendments of 2000 (Public Law
18 106–554; 114 Stat. 2763A–258).

19 (4) ~~CITY.~~—The term “City” means the city of
20 Gallup, New Mexico.

21 (5) ~~COMPACT.~~—The term “Compact” means
22 the Upper Colorado River Basin Compact as con-
23 sented to by the Act of April 6, 1949 (63 Stat. 31,
24 chapter 48).

25 (6) ~~CONTRACT.~~—The term “Contract” means
26 the contract between the United States and the Na-

tion setting forth certain commitments, rights, and obligations of the United States and the Nation, as described in paragraph 6.0 of the Agreement.

(7) DEPLETION.—The term “depletion” means the depletion of the flow of the San Juan River stream system in State of New Mexico by a particular use of water (including any depletion incident to the use) and represents the diversion from the stream system by the use, less return flows to the stream system from the use.

(8) DRAFT IMPACT STATEMENT.—The term “Draft Impact Statement” means the draft environmental impact statement prepared by the Bureau of Reclamation for the Project dated March 2007.

(9) FUND.—The term “Fund” means the Reclamation Waters Settlements Fund established by section 201(a).

(10) HYDROLOGIC DETERMINATION.—The term “hydrologic determination” means the draft hydrologic determination entitled “Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico,” prepared by the Bureau of Reclamation pursuant to section 11 of the Act of June 13, 1962 (Public Law 87-483; 76 Stat. 99), and dated May 2006.

1 (11) NATION.—The term “Nation” means the
 2 Navajo Nation, a body politic and federally-recog-
 3 nized Indian nation as provided for in section 101(2)
 4 of the Federally Recognized Indian Tribe List of
 5 1994 (25 U.S.C. 497a(2)), also known variously as
 6 the “Navajo Tribe,” the “Navajo Tribe of Arizona,
 7 New Mexico & Utah,” and the “Navajo Tribe of In-
 8 dians” and other similar names, and includes all
 9 bands of Navajo Indians and chapters of the Navajo
 10 Nation.

11 (12) NAVAJO INDIAN IRRIGATION PROJECT.—
 12 The term “Navajo Indian Irrigation Project” means
 13 the Navajo Indian irrigation project authorized by
 14 section 2 of Public Law 87–483 (76 Stat. 96).

15 (13) NAVAJO RESERVOIR.—The term “Navajo
 16 Reservoir” means the reservoir created by the im-
 17 poundment of the San Juan River at Navajo Dam,
 18 as authorized by the Act of April 11, 1956 (com-
 19 monly known as the “Colorado River Storage
 20 Project Act”) (43 U.S.C. 620 et seq.).

21 (14) NAVAJO NATION MUNICIPAL PIPELINE.—
 22 The term “Navajo Nation Municipal Pipeline”
 23 means the pipeline used to convey the water of the
 24 Animas-La Plata Project of the Navajo Nation from
 25 the City of Farmington, New Mexico, to commu-

1 nities of the Navajo Nation located in close prox-
 2 imity to the San Juan River Valley in State of New
 3 Mexico (including the City of Shiprock); as author-
 4 ized by section 15(b) of the Colorado Ute Indian
 5 Water Rights Settlement Act of 1988 (Public Law
 6 100-585; 102 Stat. 2973; 114 Stat. 2763A-263).

7 (15) NON-NAVAJO IRRIGATION DISTRICT.—The
 8 term “Non-Navajo Irrigation Districts” means—

9 (A) the Hammond Conservancy District;

10 (B) the Bloomfield Irrigation District; and

11 (C) any other community ditch organiza-
 12 tion in the San Juan River basin in State of
 13 New Mexico.

14 (16) PROJECT.—The term “Project” means the
 15 Northwestern New Mexico Rural Water Supply
 16 Project (commonly known as the “Navajo-Gallup
 17 Pipeline Project”) authorized under section 302(a),
 18 as substantially described as the preferred alter-
 19 native in the Draft Impact Statement.

20 (17) PROJECT PARTICIPANTS.—The term
 21 “Project Participants” means the City, the Nation,
 22 and the Jicarilla Apache Nation.

23 (18) RESOLUTION.—The term “Resolution”
 24 means the Resolution of the Upper Colorado River
 25 Commission entitled “Use and Accounting of Upper

1 Basin Water Supplied to the Lower Basin in New
 2 Mexico by the Proposed Project” and dated June
 3 17, 2003.

4 (19) SAN JUAN RIVER RECOVERY IMPLEMENTA-
 5 TION PROGRAM.—The term “San Juan River Recov-
 6 ery Implementation Program” means the intergov-
 7 ernmental program established pursuant to the coop-
 8 erative agreement dated October 21, 1992 (including
 9 any amendments to the program).

10 (20) SECRETARY.—The term “Secretary”
 11 means the Secretary of the Interior, acting through
 12 the Commissioner of Reclamation or any other des-
 13 ignee.

14 (21) STREAM ADJUDICATION.—The term
 15 “stream adjudication” means the general stream ad-
 16 judication that is the subject of New Mexico v.
 17 United States, et al., No. 75–185 (11th Jud. Dist.,
 18 San Juan County, New Mexico) (involving claims to
 19 waters of the San Juan River and the tributaries of
 20 that river).

21 (22) TRUST FUND.—The term “Trust Fund”
 22 means the Navajo Nation Water Resources Develop-
 23 ment Trust Fund established by section 402(a).

1 **SEC. 3. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

2 (a) ~~EFFECT OF EXECUTION OF AGREEMENT.~~—The
3 execution of the Agreement under section 401(a)(2) shall
4 not constitute a major Federal action under the National
5 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
6 seq.).

7 (b) ~~COMPLIANCE WITH ENVIRONMENTAL LAWS.~~—In
8 carrying out this Act, the Secretary shall comply with each
9 law of the Federal Government relating to the protection
10 of the environment, including—

11 (1) the National Environmental Policy Act of
12 1969 (42 U.S.C. 4321 et seq.); and

13 (2) the Endangered Species Act of 1973 (16
14 U.S.C. 1531 et seq.).

15 **TITLE I—AMENDMENTS TO THE**
16 **COLORADO RIVER STORAGE**
17 **PROJECT ACT AND PUBLIC**
18 **LAW 87–483**

19 **SEC. 101. AMENDMENTS TO THE COLORADO RIVER STOR-**
20 **AGE PROJECT ACT.**

21 (a) ~~PARTICIPATING PROJECTS.~~—Paragraph (2) of
22 the first section of the Act of April 11, 1956 (commonly
23 known as the “Colorado River Storage Project Act”) (43
24 U.S.C. 620(2)) is amended by inserting “the North-
25 western New Mexico Rural Water Supply Project,” after
26 “Fruitland Mesa,”.

1 (b) NAVAJO RESERVOIR WATER BANK.—The Act of
 2 April 11, 1956 (commonly known as the “Colorado River
 3 Storage Project Act”) is amended—

4 (1) by redesignating section 16 (43 U.S.C.
 5 620e) as section 17; and

6 (2) by inserting after section 15 (43 U.S.C.
 7 620n) the following:

8 “SEC. 16. (a) The Secretary of the Interior may ere-
 9 ate and operate within the available capacity of Navajo
 10 Reservoir a top water bank.

11 “(b) Water made available for the top water bank in
 12 accordance with subsections (c) and (d) shall not be sub-
 13 ject to section 11 of Public Law 87–483 (76 Stat. 99).

14 “(c) The top water bank authorized under subsection
 15 (a) shall be operated in a manner that—

16 “(1) is consistent with applicable law; and

17 “(2) does not impair the ability of the Secretary
 18 of the Interior to deliver water under contracts en-
 19 tered into under—

20 “(A) Public Law 87–483 (76 Stat. 96);

21 and

22 “(B) New Mexico State Engineer File Nos.
 23 2847, 2848, 2849, and 2917.

24 “(d)(1) The Secretary of the Interior, in cooperation
 25 with the State of New Mexico (acting through the Inter-

1 state Stream Commission); shall develop any terms and
2 procedures for the storage, accounting, and release of
3 water in the top water bank that are necessary to comply
4 with subsection (c).

5 “(2) The terms and procedures developed under para-
6 graph (1) shall include provisions requiring that—

7 “(A) the storage of banked water shall be sub-
8 ject to approval under State law by the New Mexico
9 State Engineer to ensure that impairment of any ex-
10 isting water right does not occur, including storage
11 of water under New Mexico State Engineer File No.
12 2849;

13 “(B) water in the top water bank be subject to
14 evaporation and other losses during storage;

15 “(C) water in the top water bank be released
16 for delivery to the owner or assigns of the banked
17 water on request of the owner, subject to reasonable
18 scheduling requirements for making the release; and

19 “(D) water in the top water bank be the first
20 water spilled or released for flood control purposes
21 in anticipation of a spill, on the condition that top
22 water bank water shall not be released or included
23 for purposes of calculating whether a release should
24 occur for purposes of satisfying releases required

1 under the San Juan River Recovery Implementation
2 Program.

3 “(e) The Secretary of the Interior may charge fees
4 to water users that use the top water bank in amounts
5 sufficient to cover the costs incurred by the United States
6 in administering the water bank.”.

7 **SEC. 102. AMENDMENTS TO PUBLIC LAW 87-483.**

8 (a) NAVAJO INDIAN IRRIGATION PROJECT.—Public
9 Law 87-483 (76 Stat. 96) is amended by striking section
10 2 and inserting the following:

11 “SEC. 2. (a) In accordance with the Act of April 11,
12 1956 (commonly known as the ‘Colorado River Storage
13 Project Act’) (43 U.S.C. 620 et seq.), the Secretary of
14 the Interior is authorized to construct, operate, and main-
15 tain the Navajo Indian Irrigation Project to provide irriga-
16 tion water to a service area of not more than 110,630
17 acres of land.

18 “(b)(1) Subject to paragraph (2), the average diver-
19 sion by the Navajo Indian Irrigation Project from the
20 Navajo Reservoir over any consecutive 10-year period shall
21 be the lesser of—

22 “(A) 508,000 acre-feet per year; or

23 “(B) the quantity of water necessary to supply
24 an average depletion of 270,000 acre-feet per year.

1 “(2) The quantity of water diverted for any 1 year
2 shall not be more than 15 percent of the average diversion
3 determined under paragraph (1).

4 “(c) In addition to being used for irrigation, the
5 water diverted by the Navajo Indian Irrigation Project
6 under subsection (b) may be used within the area served
7 by Navajo Indian Irrigation Project facilities for the fol-
8 lowing purposes:

9 “(1) Aquaculture purposes, including the
10 rearing of fish in support of the San Juan River
11 Basin Recovery Implementation Program authorized
12 by Public Law 106-392 (114 Stat. 1602).

13 “(2) Domestic, industrial, or commercial pur-
14 poses relating to agricultural production and proc-
15 essing.

16 “(3) The generation of hydroelectric power as
17 an incident to the diversion of water by the Navajo
18 Indian Irrigation Project for authorized purposes.

19 “(4) The implementation of the alternate water
20 source provisions described in subparagraph 9.2 of
21 the agreement executed under section 401(a)(2) of
22 the Northwestern New Mexico Rural Water Projects
23 Act.

24 “(d) The Navajo Indian Irrigation Project water di-
25 verted under subsection (b) may be transferred to areas

1 located within or outside the area served by Navajo Indian
 2 Irrigation Project facilities, and within or outside the
 3 boundaries of the Navajo Nation, for any beneficial use
 4 in accordance with—

5 “(1) the agreement executed under section
 6 401(a)(2) of the Northwestern New Mexico Rural
 7 Water Projects Act;

8 “(2) the contract executed under section
 9 304(a)(2)(B) of the Northwestern New Mexico
 10 Rural Water Projects Act; and

11 “(3) any other applicable law.

12 “(e)(1) The Secretary may use the capacity of the
 13 Navajo Indian Irrigation Project works to convey water
 14 supplies for—

15 “(A) the Northwestern New Mexico Rural
 16 Water Supply Project under section 302 of the
 17 Northwestern New Mexico Rural Water Projects
 18 Act; or

19 “(B) other nonirrigation purposes authorized
 20 under subsection (c) or (d).

21 “(2) The Secretary shall not reallocate, or require re-
 22 payment of, construction costs of the Navajo Indian Irri-
 23 gation Project because of the conveyance of water supplies
 24 under paragraph (1).”.

1 (b) RUNOFF ABOVE NAVAJO DAM.—Section 11 of
 2 Public Law 87-483 (76 Stat. 100) is amended by adding
 3 at the end the following:

4 “(d)(1) For purposes of implementing in a year of
 5 prospective shortage the water allocation procedures es-
 6 tablished by subsection (a), the Secretary of the Interior
 7 shall determine the quantity of any shortages and the ap-
 8 propriate apportionment of water using the normal diver-
 9 sion requirements on the flow of the San Juan River origi-
 10 nating above Navajo Dam based on the following criteria:

11 “(A) The quantity of diversion or water delivery
 12 for the current year anticipated to be necessary to
 13 irrigate land in accordance with cropping plans pre-
 14 pared by contractors.

15 “(B) The annual diversion or water delivery de-
 16 mands for the current year anticipated for non-irri-
 17 gation uses under water delivery contracts, including
 18 the demand for delivery for uses in the State of Ari-
 19 zona under the Northwestern New Mexico Rural
 20 Water Supply Project authorized by section 302(a)
 21 of the Northwestern New Mexico Rural Water
 22 Projects Act, but excluding any current demand for
 23 surface water for placement into aquifer storage for
 24 future recovery and use.

1 “(C) An annual normal diversion demand of
 2 135,000 acre-feet for the initial stage of the San
 3 Juan-Chama Project authorized by section 8.

4 “(2) The Secretary shall not include in the normal
 5 diversion requirements—

6 “(A) the quantity of water that reliably can be
 7 anticipated to be diverted or delivered under a con-
 8 tract from inflows to the San Juan River arising
 9 below Navajo Dam under New Mexico State Engi-
 10 neer File No. 3215; or

11 “(B) the quantity of water anticipated to be
 12 supplied through reuse.

13 “(3) If the State of New Mexico determines that
 14 water uses under Navajo Reservoir water supply contracts
 15 or diversions by the San Juan-Chama Project need to be
 16 reduced in any 1 year for the State to comply with the
 17 Upper Colorado River Basin Compact, as consented to by
 18 the Act of April 6, 1949 (63 Stat. 31, chapter 48), the
 19 Secretary shall reduce the normal diversion requirements
 20 for the year to reflect the water use or diversion limita-
 21 tions imposed by the State of New Mexico.

22 “(c)(1) If the Secretary determines that there is a
 23 shortage of water under subsection (a), the Secretary shall
 24 allocate the shortage to the demands on the Navajo Res-
 25 ervoir water supply in the following order of priority:

1 “(A) The demand for delivery for uses in the
2 State of Arizona under the Northwestern New Mex-
3 ico Rural Water Supply Project authorized by sec-
4 tion 303 of the Northwestern New Mexico Rural
5 Water Projects Act, excluding the quantity of water
6 anticipated to be diverted for the uses from inflows
7 to the San Juan River that arise below Navajo Dam
8 in accordance with New Mexico State Engineer File
9 No. 3215.

10 “(B) The demand for delivery for uses allocated
11 under paragraph 8.2 of the agreement executed
12 under section 401(a)(2) of the Northwestern New
13 Mexico Rural Water Projects Act, excluding the
14 quantity of water anticipated to be diverted for such
15 uses under State Engineer File No. 3215.

16 “(C) The uses in the State of New Mexico that
17 are determined under subsection (d), in accordance
18 with the procedure for apportioning the water supply
19 under subsection (a).

20 “(2) For any year for which the Secretary determines
21 and allocates a shortage in the Navajo Reservoir water
22 supply, the Secretary shall not deliver, and contractors of
23 the water supply shall not divert, any of the water supply
24 for placement into aquifer storage for future recovery and
25 use.

1 ~~“(3) To determine the occurrence and amount of any~~
2 ~~shortage to contracts entered into under this section, the~~
3 ~~Secretary shall not include as available storage any water~~
4 ~~stored in a top water bank in Navajo Reservoir established~~
5 ~~under section 16(a) of the Act of April 11, 1956 (com-~~
6 ~~monly known as the ‘Colorado River Storage Project Act’).~~

7 ~~“(f) The Secretary of the Interior shall apply the~~
8 ~~sharing and apportionment of water determined under~~
9 ~~subsections (a), (d), and (e) on an annual volume basis.~~

10 ~~“(g) The Secretary of the Interior may revise a deter-~~
11 ~~mination of shortages, apportionments, or allocations of~~
12 ~~water under subsections (a), (d), and (e) on the basis of~~
13 ~~information relating to water supply conditions that was~~
14 ~~not available at the time at which the determination was~~
15 ~~made.~~

16 ~~“(h) Nothing in this section prohibits the Secretary~~
17 ~~from reallocating water for any year, including a year in~~
18 ~~which a shortage is determined under subsection (a), in~~
19 ~~accordance with cooperative water agreements between~~
20 ~~water users providing for a sharing of water supplies.~~

21 ~~“(i) Any water available for diversion under New~~
22 ~~Mexico State Engineer File No. 3215 shall be distributed,~~
23 ~~to the maximum extent practicable, in proportionate~~
24 ~~amounts to the diversion demands of all contractors and~~

1 subcontractors of the Navajo Reservoir water supply that
 2 are diverting water below Navajo Dam.”.

3 **SEC. 103. EFFECT ON FEDERAL WATER LAW.**

4 Unless expressly provided in this Act, nothing in this
 5 Act modifies, conflicts with, preempts, or otherwise af-
 6 fects—

7 (1) the Boulder Canyon Project Act (~~43~~ U.S.C.
 8 617 et seq.);

9 (2) the Boulder Canyon Project Adjustment Act
 10 (~~54~~ Stat. 774, chapter 643);

11 (3) the Act of April 11, 1956 (commonly known
 12 as the “Colorado River Storage Project Act”) (~~43~~
 13 U.S.C. 620 et seq.);

14 (4) the Act of September 30, 1968 (commonly
 15 known as the “Colorado River Basin Project Act”)
 16 (~~82~~ Stat. 885);

17 (5) Public Law 87–483 (~~76~~ Stat. 96);

18 (6) the Treaty between the United States of
 19 America and Mexico representing utilization of wa-
 20 ters of the Colorado and Tijuana Rivers and of the
 21 Rio Grande, signed at Washington February 3, 1944
 22 (~~59~~ Stat. 1219);

23 (7) the Colorado River Compact of 1922, as ap-
 24 proved by the Presidential Proclamation of June 25,
 25 1929 (~~46~~ Stat. 3000);

- 1 (8) the Compact;
- 2 (9) the Act of April 6, 1949 (63 Stat. 31, chap-
- 3 ter 48);
- 4 (10) the Jicarilla Apache Tribe Water Rights
- 5 Settlement Act (106 Stat. 2237); or
- 6 (11) section 205 of the Energy and Water De-
- 7 velopment Appropriations Act, 2005 (118 Stat.
- 8 2949).

9 **TITLE II—RECLAMATION WATER**

10 **SETTLEMENTS FUND**

11 **SEC. 201. RECLAMATION WATER SETTLEMENTS FUND.**

12 (a) **ESTABLISHMENT.**—There is established in the

13 Treasury of the United States a fund, to be known as the

14 “Reclamation Water Settlements Fund”, consisting of—

- 15 (1) such amounts as are deposited to the Fund
- 16 under subsection (b); and
- 17 (2) any interest earned on investment of
- 18 amounts in the Fund under subsection (d).

19 (b) **DEPOSITS TO FUND.**—

20 (1) **IN GENERAL.**—For each of fiscal years

21 2018 through 2028, the Secretary of the Treasury

22 shall deposit in the Fund, if available, \$100,000,000

23 of the revenues that would otherwise be deposited

24 for the fiscal year in the fund established by the

1 first section of the Act of June 17, 1902 (32 Stat.
2 388, chapter 1093).

3 ~~(2) AVAILABILITY OF AMOUNTS.—~~Amounts de-
4 posited in the Fund under paragraph (1) shall be
5 made available pursuant to this section—

6 ~~(A)~~ without further appropriation; and

7 ~~(B)~~ in addition to amounts appropriated
8 pursuant to any authorization contained in any
9 other provision of law.

10 ~~(c) EXPENDITURES FROM FUND.—~~

11 ~~(1) IN GENERAL.—~~For each of fiscal years
12 2018 through 2030, on request by the Secretary
13 pursuant to paragraphs (2) and (3), the Secretary
14 of the Treasury shall transfer from the Fund to the
15 Secretary an amount not to exceed \$100,000,000 for
16 the fiscal year requested.

17 ~~(2) REQUESTS.—~~The Secretary may request a
18 transfer from the Fund to implement a settlement
19 agreement approved by Congress that resolves, in
20 whole or in part, litigation involving the United
21 States or any other agreement approved by Congress
22 that is entered into by the Secretary, if the settle-
23 ment or other agreement requires the Bureau of
24 Reclamation to plan, design, and construct—

25 ~~(A)~~ water supply infrastructure; or

~~(B)~~ a project—

(i) to rehabilitate a water delivery system to conserve water; or

(ii) to restore fish and wildlife habitat or otherwise improve environmental conditions associated with or affected by a reclamation project that is in existence on the date of enactment of this Act.

~~(3)~~ USE FOR COMPLETION OF PROJECT.—

~~(A)~~ PRIORITIES.—

(i) FIRST PRIORITY.—The first priority for expenditure of amounts in the Fund shall be for the purposes described in subparagraph (B).

(ii) OTHER PURPOSES.—Any amounts in the Fund that are not needed for the purposes described in subparagraph (B) may be used for other purposes authorized in paragraph (2).

~~(B)~~ COMPLETION OF PROJECT.—Effective beginning January 1, 2018, if, in the judgment of the Secretary, the deadline described in section 401(f)(1)(A)(ix) is unlikely to be met because a sufficient amount of funding is not otherwise available through appropriations made

1 available pursuant to section 309(a), the Sec-
 2 retary shall request the Secretary of the Treas-
 3 ury to transfer from the Fund to the Secretary
 4 such amounts on an annual basis pursuant to
 5 paragraph (1), not to exceed a total of
 6 \$500,000,000, as are necessary to pay the Fed-
 7 eral share of the costs, and substantially com-
 8 plete as expeditiously as practicable, the con-
 9 struction of the water supply infrastructure au-
 10 thorized as part of the Project.

11 (C) PROHIBITED USE OF FUND.—The Sec-
 12 retary shall not use any amount transferred
 13 from the Fund under subparagraph (A) to
 14 carry out any other feature or activity described
 15 in title IV other than a feature or activity relat-
 16 ing to the construction of the water supply in-
 17 frastructure authorized as part of the Project.

18 (d) INVESTMENT OF AMOUNTS.—

19 (1) IN GENERAL.—The Secretary of the Treas-
 20 ury shall invest such portion of the Fund as is not,
 21 in the judgment of the Secretary of the Treasury,
 22 required to meet current withdrawals.

23 (2) INTEREST-BEARING OBLIGATIONS.—Invest-
 24 ments may be made only in interest-bearing obliga-
 25 tions of the United States.

1 ~~(3)~~ ACQUISITION OF OBLIGATIONS.—For the
 2 purpose of investments under paragraph (1), obliga-
 3 tions may be acquired—

4 ~~(A)~~ on original issue at the issue price; or
 5 ~~(B)~~ by purchase of outstanding obligations
 6 at the market price.

7 ~~(4)~~ SALE OF OBLIGATIONS.—Any obligation ac-
 8 quired by the Fund may be sold by the Secretary of
 9 the Treasury at the market price.

10 ~~(5)~~ CREDITS TO FUND.—The interest on, and
 11 the proceeds from the sale or redemption of, any ob-
 12 ligations held in the Fund shall be credited to, and
 13 form a part of, the Fund.

14 ~~(e)~~ TRANSFERS OF AMOUNTS.—

15 ~~(1)~~ IN GENERAL.—The amounts required to be
 16 transferred to the Fund under this section shall be
 17 transferred at least monthly from the general fund
 18 of the Treasury to the Fund on the basis of esti-
 19 mates made by the Secretary of the Treasury.

20 ~~(2)~~ ADJUSTMENTS.—Proper adjustment shall
 21 be made in amounts subsequently transferred to the
 22 extent prior estimates were in excess of or less than
 23 the amounts required to be transferred.

24 ~~(f)~~ TERMINATION.—On September 30, 2030—

25 ~~(1)~~ the Fund shall terminate; and

1 ~~(2) the unexpended and unobligated balance of~~
 2 ~~the Fund shall be transferred to the general fund of~~
 3 ~~the Treasury.~~

4 **TITLE III—NORTHWESTERN NEW**
 5 **MEXICO RURAL WATER SUP-**
 6 **PLY PROJECT**

7 **SEC. 301. PURPOSES.**

8 The purposes of this subtitle are—

9 ~~(1) to authorize the Secretary to construct the~~
 10 ~~Northwestern New Mexico Rural Water Supply~~
 11 ~~Project;~~

12 ~~(2) to allocate the water supply for the Project~~
 13 ~~among the Nation, the city of Gallup, New Mexico,~~
 14 ~~and the Jicarilla Apache Nation; and~~

15 ~~(3) to authorize the Secretary to enter into~~
 16 ~~Project repayment contracts with the city of Gallup~~
 17 ~~and the Jicarilla Apache Nation.~~

18 **SEC. 302. AUTHORIZATION OF NORTHWESTERN NEW MEX-**
 19 **ICO RURAL WATER SUPPLY PROJECT.**

20 ~~(a) IN GENERAL.—~~The Secretary, acting through the
 21 Commissioner of Reclamation, is authorized to design,
 22 construct, operate, and maintain the Project in substantial
 23 accordance with the preferred alternative in the Draft Im-
 24 pact Statement.

1 (b) ~~PROJECT FACILITIES.—To provide for the deliv-~~
2 ~~ery of San Juan River water to Project Participants, the~~
3 ~~Secretary may construct, operate, and maintain the~~
4 ~~Project facilities described in the preferred alternative in~~
5 ~~the Draft Impact Statement, including:~~

6 (1) ~~A pumping plant on the San Juan River in~~
7 ~~the vicinity of Kirtland, New Mexico.~~

8 (2)(A) ~~A main pipeline from the San Juan~~
9 ~~River near Kirtland, New Mexico, to Shiprock, New~~
10 ~~Mexico, and Gallup, New Mexico, which follows~~
11 ~~United States Highway 491.~~

12 (B) ~~Any pumping plants associated with the~~
13 ~~pipeline authorized under subparagraph (A).~~

14 (3)(A) ~~A main pipeline from Cutter Reservoir~~
15 ~~to Ojo Encino, New Mexico, which follows United~~
16 ~~States Highway 550.~~

17 (B) ~~Any pumping plants associated with the~~
18 ~~pipeline authorized under subparagraph (A).~~

19 (4)(A) ~~Lateral pipelines from the main pipelines~~
20 ~~to Nation communities in the States of New Mexico~~
21 ~~and Arizona.~~

22 (B) ~~Any pumping plants associated with the~~
23 ~~pipelines authorized under subparagraph (A).~~

24 (5) ~~Any water regulation, storage or treatment~~
25 ~~facility, service connection to an existing public~~

1 water supply system, power substation, power dis-
 2 tribution works, or other appurtenant works (includ-
 3 ing a building or access road) that is related to the
 4 Project facilities authorized by paragraphs (1)
 5 through (4), including power transmission facilities
 6 to connect Project facilities to existing high-voltage
 7 transmission facilities.

8 (c) ACQUISITION OF LAND.—

9 (1) IN GENERAL.—Except as provided in para-
 10 graph (2), the Secretary may acquire any land or in-
 11 terest in land that is necessary to construct, operate,
 12 and maintain the Project facilities authorized under
 13 subsection (b).

14 (2) LIMITATION.—The Secretary may not con-
 15 demn water rights for purposes of the Project.

16 (d) CONDITIONS.—

17 (1) IN GENERAL.—The Secretary shall not com-
 18 mence construction of the facilities authorized under
 19 subsection (b) until such time as—

20 (A) the Secretary executes the Agreement
 21 and the Contract;

22 (B) the contracts authorized under section
 23 304 are executed;

24 (C) the Secretary—

1 (i) completes an environmental impact
2 statement for the Project; and

3 (ii) has issued a record of decision
4 that provides for a preferred alternative;
5 and

6 (D) the State of New Mexico has made ar-
7 rangements with the Secretary to contribute
8 \$25,000,000 toward the construction costs of
9 the Project.

10 (2) COST SHARING.—State contributions re-
11 quired under paragraph (1)(D) shall be in addition
12 to amounts that the State of New Mexico contrib-
13 utes for the planning and construction of regional
14 facilities to distribute Project water to the City and
15 surrounding Nation communities before the date on
16 which the City executes a repayment contract under
17 section 304(b).

18 (3) EFFECT.—The design and construction of
19 the Project shall not be subject to the Indian Self-
20 Determination and Education Assistance Act (25
21 U.S.C. 450 et seq.).

22 (c) POWER ISSUES.—

23 (1) RESERVATION.—The Secretary shall re-
24 serve, from existing reservations of Colorado River
25 Storage Project power for Bureau of Reclamation

1 projects, up to 26 megawatts of power for use by the
 2 Project.

3 ~~(2) REALLOCATION OF COSTS.—~~Notwith-
 4 standing the Act of April 11, 1956 (commonly
 5 known as the “Colorado River Storage Project Act”)
 6 ~~(43 U.S.C. 620 et seq.)~~, the Secretary shall not re-
 7 allocate or reassign any cost associated with the
 8 Project from an entity covered by this title to the
 9 power function.

10 ~~(f) CONVEYANCE OF PROJECT FACILITIES.—~~

11 ~~(1) IN GENERAL.—~~The Secretary is authorized
 12 to enter into separate agreements with the City and
 13 the Nation to convey each Project facility authorized
 14 under subsection (b) to the City and the Nation
 15 after—

16 ~~(A) completion of construction of the~~
 17 ~~Project; and~~

18 ~~(B) execution of a Project operations~~
 19 ~~agreement approved by the Secretary and the~~
 20 ~~Project Participants that sets forth—~~

21 ~~(i) any terms and conditions that the~~
 22 ~~Secretary determines are necessary—~~

23 ~~(I) to ensure the continuation of~~
 24 ~~the intended benefits of the Project;~~
 25 ~~and~~

1 (II) to fulfill the purposes of this
2 subtitle;

3 (ii) requirements acceptable to the
4 Secretary and the Project Participants
5 for—

6 (I) the distribution of water
7 under the Project; and

8 (II) the allocation and payment
9 of annual operation, maintenance, and
10 replacement costs of the Project based
11 on the proportionate uses of Project
12 facilities; and

13 (iii) conditions and requirements ac-
14 ceptable to the Secretary and the Project
15 Participants for operating and maintaining
16 each Project facility on completion of the
17 conveyance, including the requirement that
18 the City and the Nation shall—

19 (I) comply with—

20 (aa) the Compact; and

21 (bb) other applicable law;

22 and

23 (II) be responsible for—

1 (aa) the operation, mainte-
 2 nance, and replacement of each
 3 Project facility; and

4 (bb) the accounting and
 5 management of water conveyance
 6 and Project finances, as nec-
 7 essary to administer and fulfill
 8 the conditions of the Contract ex-
 9 ecuted under section
 10 304(a)(2)(B).

11 (2) CONVEYANCE TO THE CITY OF GALLUP OR
 12 NAVAJO NATION.—In conveying a Project facility
 13 under this subsection, the Secretary shall convey
 14 to—

15 (A) the City the facilities and any land or
 16 interest in land acquired by the United States
 17 for the construction, operation, and mainte-
 18 nance of the Project that are located within the
 19 corporate boundaries of the City; and

20 (B) the Nation the facilities and any land
 21 or interests in land acquired by the United
 22 States for the construction, operation, and
 23 maintenance of the Project that are located out-
 24 side the corporate boundaries of the City.

1 ~~(3) EFFECT OF CONVEYANCE.—~~The conveyance
 2 of each Project facility shall not affect the applica-
 3 tion of the Endangered Species Act of 1973 ~~(16~~
 4 ~~U.S.C. 1531~~ et seq.) relating to the use of the water
 5 associated with the Project.

6 ~~(4) NOTICE OF PROPOSED CONVEYANCE.—~~Not
 7 later than 45 days before the date of a proposed
 8 conveyance of any Project facility, the Secretary
 9 shall submit to the Committee on Resources of the
 10 House of Representatives and to the Committee on
 11 Energy and Natural Resources of the Senate notice
 12 of the conveyance of each Project facility.

13 ~~(g) COLORADO RIVER STORAGE PROJECT POWER.—~~
 14 The conveyance of Project facilities under subsection (f)
 15 shall not affect the availability of Colorado River Storage
 16 Project power to the Project under subsection (e).

17 ~~(h) REGIONAL USE OF PROJECT FACILITIES.—~~

18 ~~(1) IN GENERAL.—~~Subject to paragraph ~~(2)~~;
 19 Project facilities constructed under subsection ~~(b)~~
 20 may be used to treat and convey non-Project water
 21 or water that is not allocated by subsection ~~303(b)~~
 22 if—

23 ~~(A)~~ capacity is available without impairing
 24 any water delivery to a Project Participant; and

1 ~~(B)~~ the unallocated or non-Project water
 2 beneficiary—

3 ~~(i)~~ has the right to use the water;

4 ~~(ii)~~ agrees to pay the operation, main-
 5 tenance, and replacement costs assignable
 6 to the beneficiary for the use of the Project
 7 facilities; and

8 ~~(iii)~~ agrees to pay a fee established by
 9 the Secretary to assist in the recovery of
 10 any capital cost relating to that use.

11 ~~(2) EFFECT OF PAYMENTS.—~~Any payments to
 12 the United States or the Nation for the use of un-
 13 used capacity under this subsection or for water
 14 under any subcontract with the Nation or the
 15 Jicarilla Apache Nation shall not alter the construc-
 16 tion repayment requirements or the operation, main-
 17 tenance, and replacement payment requirements of
 18 the Project Participants.

19 **SEC. 303. DELIVERY AND USE OF NORTHWESTERN NEW**
 20 **MEXICO RURAL WATER SUPPLY PROJECT**
 21 **WATER.**

22 ~~(a) USE OF PROJECT WATER.—~~

23 ~~(1) IN GENERAL.—~~In accordance with this Act
 24 and other applicable law, water supply from the

1 Project shall be used for municipal, industrial, com-
 2 mercial, domestic, and stock watering purposes.

3 ~~(2) USE ON CERTAIN LAND.—~~

4 ~~(A) IN GENERAL.—~~Subject to subpara-
 5 graph (B), the Nation may use Project water
 6 allocations on—

7 (i) land held by the United States in
 8 trust for the Nation and members of the
 9 Nation; and

10 (ii) land held in fee by the Nation.

11 ~~(B) TRANSFER.—~~The Nation may transfer
 12 the purposes and places of use of the allocated
 13 water in accordance with the Agreement and
 14 applicable law.

15 ~~(3) HYDROELECTRIC POWER.—~~Hydroelectric
 16 power may be generated as an incident to the deliv-
 17 ery of Project water under paragraph (1).

18 ~~(4) STORAGE.—~~

19 ~~(A) IN GENERAL.—~~Subject to subpara-
 20 graph (B), any water contracted for delivery
 21 under paragraph (1) that is not needed for cur-
 22 rent water demands or uses may be delivered by
 23 the Project for placement in underground stor-
 24 age in the State of New Mexico for future re-
 25 covery and use.

1 ~~(B) STATE APPROVAL.~~—Delivery of water
2 under subparagraph (A) is subject to—

3 (i) approval by the State of New Mex-
4 ico under applicable provisions of State law
5 relating to aquifer storage and recovery;
6 and

7 (ii) the provisions of the Agreement
8 and this Act.

9 ~~(b) PROJECT WATER AND CAPACITY ALLOCA-~~
10 ~~TIONS.—~~

11 ~~(1) DIVERSION.~~—The Project shall divert from
12 the Navajo Reservoir and the San Juan River a
13 quantity of water that does not exceed the lesser
14 of—

15 ~~(A) 37,760 acre-feet of water; or~~

16 ~~(B) the quantity of water necessary to sup-~~
17 ~~ply a depletion from the San Juan River of~~
18 ~~35,890 acre-feet.~~

19 ~~(2) ALLOCATION.—~~

20 ~~(A) IN GENERAL.~~—Water diverted under
21 paragraph ~~(1)~~ shall be allocated to the Project
22 Participants in accordance with subparagraphs
23 ~~(B)~~ through ~~(E)~~, other provisions of this Act,
24 and other applicable law.

(B) ALLOCATION TO THE CITY OF GAL-
LUP.—The Project shall deliver at the point of
diversion from the San Juan River not more
than 7,500 acre-feet of water for use by the
City.

(C) ALLOCATION TO NAVAJO NATION COM-
MUNITIES IN NEW MEXICO.—For use by the
Nation in the State of New Mexico, the Project
shall deliver at the points of diversion from the
San Juan River or at Navajo Reservoir the less-
er of—

(i) 22,650 acre-feet of water; or

(ii) the quantity of water necessary to
supply a depletion from the San Juan
River of 20,780 acre-feet of water.

(D) ALLOCATION TO NAVAJO NATION COM-
MUNITIES IN ARIZONA.—In accordance with
subsection (d), the Project may deliver at the
point of diversion from the San Juan River not
more than 6,411 acre-feet of water for use by
the Nation in the State of Arizona.

(E) ALLOCATION TO JICARILLA APACHE
NATION.—The Project shall deliver at Navajo
Reservoir not more than 1,200 acre-feet of
water for use by the Jicarilla Apache Nation in

1 the southern portion of the Jicarilla Apache
 2 Nation Reservation in the State of New Mexico.

3 ~~(3) USE IN EXCESS OF ALLOCATION QUAN-~~
 4 ~~TITY.~~—Notwithstanding each allocation quantity
 5 limit described in subparagraphs (B), (C), and (E)
 6 of paragraph ~~(2)~~, the Secretary may authorize a
 7 Project Participant to exceed the allocation quantity
 8 limit of that Project Participant if—

9 (A) capacity is available without impairing
 10 any water delivery to any other Project Partici-
 11 pant; and

12 (B) the Project Participant benefitting
 13 from the increased allocation quantity—

14 (i) has the right to use the additional
 15 water;

16 (ii) agrees to pay the operation, main-
 17 tenance, and replacement costs relating to
 18 the additional use any Project facility; and

19 (iii) agrees to pay a fee established by
 20 the Secretary to assist in recovering capital
 21 costs relating to that additional use.

22 ~~(c) SOURCES OF WATER.~~—The sources of water for
 23 the Project allocated by subsection (b) shall be water origi-
 24 nating in—

(1) drainage of the San Juan River above Navajo Dam, to be supplied under New Mexico State Engineer File No. 2849; and

(2) inflow to the San Juan River arising below Navajo Dam, to be supplied under New Mexico State Engineer File No. 3215.

(d) CONDITIONS FOR USE IN ARIZONA.—

(1) REQUIREMENTS.—Project water shall not be delivered for use by any community of the Nation in the State of Arizona under subsection (b)(2)(D) until the date on which—

(A) the Secretary determines by hydrologic investigation that sufficient water is reasonably likely to be available to supply uses from water of the Colorado River system allocated to the State of Arizona;

(B) the Secretary submits to Congress the determination described in subparagraph (A);

(C) the Secretary determines that the uses in the State of Arizona are within the apportionment of the water of the Colorado River made to the State of Arizona through compact, statute, or court decree;

(D) Congress has approved a Navajo Reservoir supply contract between the Nation and

1 the United States to provide for the delivery of
 2 Project water for the uses in Arizona;

3 ~~(E)~~ the Navajo Nation and the State of
 4 Arizona have entered into an agreement pro-
 5 viding for delivery of water of the Project for
 6 uses in Arizona; and

7 ~~(F)~~ any other determination is made as
 8 may be required by the Compact.

9 ~~(2) ACCOUNTING OF USES IN ARIZONA.—Any~~
 10 ~~depletion of water from the San Juan River stream~~
 11 ~~system in the State of New Mexico that results from~~
 12 ~~the diversion of water by the Project for uses within~~
 13 ~~the State of Arizona (including depletion incidental~~
 14 ~~to the diversion, impounding, or conveyance of water~~
 15 ~~in the State of New Mexico for uses in the State of~~
 16 ~~Arizona)—~~

17 ~~(A)~~ shall be accounted for as a part of the
 18 Colorado River System apportionments to the
 19 State of Arizona; and

20 ~~(B)~~ shall not increase the total quantity of
 21 water to which the State of Arizona is entitled
 22 to use under any compact, statute, or court de-
 23 cree.

24 ~~(c) FORBEARANCE.—~~

1 (1) IN GENERAL.—Subject to paragraphs (2)
 2 and (3), during any year in which a shortage to the
 3 normal diversion requirement for any use relating to
 4 the Project within the State of Arizona occurs (as
 5 determined under section 11 of Public Law 87–483
 6 (76 Stat. 99)), the Nation may temporarily forbear
 7 the delivery of the water supply of the Navajo Res-
 8 ervoir for uses in the State of New Mexico under the
 9 apportionments of water to the Navajo Indian Irri-
 10 gation Project and the normal diversion require-
 11 ments of the Project to allow an equivalent quantity
 12 of water to be delivered from the Navajo Reservoir
 13 water supply for municipal and domestic uses of the
 14 Nation in the State of Arizona under the Project.

15 (2) LIMITATION OF FORBEARANCE.—The Na-
 16 tion may forbear the delivery of water under para-
 17 graph (1) of a quantity not exceeding the quantity
 18 of the shortage to the normal diversion requirement
 19 for any use relating to the Project within the State
 20 of Arizona.

21 (3) EFFECT.—The forbearance of the delivery
 22 of water under paragraph (1) shall be subject to the
 23 requirements relating to accounting and water quan-
 24 tity described in subsection (d)(2).

25 (f) EFFECT.—Nothing in this Act—

1 (1) authorizes the marketing, leasing, or trans-
 2 fer of the water supplies made available to the Na-
 3 tion under the Contract to non-Navajo water users
 4 in States other than the State of New Mexico; or

5 (2) authorizes the forbearance of water uses in
 6 the State of New Mexico to allow uses of water in
 7 other States other than as authorized under sub-
 8 section (c).

9 (g) ~~CONSISTENCY WITH UPPER COLORADO RIVER~~
 10 BASIN COMPACT.—In accordance with the Resolution and
 11 notwithstanding any other provision of law—

12 (1) water may be diverted by the Project from
 13 the San Juan River in the State of New Mexico for
 14 use in the Lower Colorado River Basin in the State
 15 of New Mexico; and

16 (2) water diverted under paragraph (1) shall be
 17 a part of the consumptive use apportionment made
 18 to the State of New Mexico by Article III(a) of the
 19 Compact.

20 **SEC. 304. PROJECT CONTRACTS.**

21 (a) ~~NAVAJO NATION CONTRACT.~~—

22 (1) ~~HYDROLOGIC DETERMINATION.~~—Congress
 23 recognizes that the Hydrologic Determination satis-
 24 factory to support approval of the Contract has been
 25 completed.

1 ~~(2) CONTRACT APPROVAL.—~~

2 ~~(A) APPROVAL.—~~

3 ~~(i) IN GENERAL.—Except to the ex-~~
 4 ~~tent that any provision of the Contract~~
 5 ~~conflicts with this Act, Congress approves,~~
 6 ~~ratifies, and incorporates by reference the~~
 7 ~~Contract.~~

8 ~~(ii) AMENDMENTS.—To the extent~~
 9 ~~any amendment is executed to make the~~
 10 ~~Contract consistent with this Act, that~~
 11 ~~amendment is authorized, ratified, and~~
 12 ~~confirmed.~~

13 ~~(B) EXECUTION OF CONTRACT.—The Sec-~~
 14 ~~retary, acting on behalf of the United States,~~
 15 ~~shall enter into the Contract to the extent that~~
 16 ~~the Contract does not conflict with this Act (in-~~
 17 ~~cluding any amendment that is required to~~
 18 ~~make the Contract consistent with this Act).~~

19 ~~(3) NO REPAYMENT OBLIGATION.—The Nation~~
 20 ~~is not obligated to repay—~~

21 ~~(A) any share of the construction costs of~~
 22 ~~the Nation relating to the Project authorized by~~
 23 ~~section 302(a); or~~

24 ~~(B) any costs relating to the construction~~
 25 ~~of the Navajo Indian Irrigation Project that~~

1 may otherwise be allocable to the Nation for
 2 use of any facility of the Navajo Indian Irriga-
 3 tion Project to convey water to each Navajo
 4 community under the Project.

5 ~~(4) OPERATION, MAINTENANCE, AND REPLACE-~~
 6 ~~MENT OBLIGATION.~~—Subject to subsection (f), the
 7 Nation shall pay any costs relating to the operation,
 8 maintenance, and replacement of each facility of the
 9 Project that are allocable to the Nation.

10 ~~(5) LIMITATION, CANCELLATION, TERMINATION,~~
 11 ~~AND RESCISSION.~~—The Contract may be limited by
 12 a term of years, canceled, terminated, or rescinded
 13 only by an Act of Congress.

14 ~~(b) CITY OF GALLUP CONTRACT.~~—

15 ~~(1) CONTRACT AUTHORIZATION.~~—To the extent
 16 consistent with this Act, the Secretary is authorized
 17 to enter into a repayment contract with the City
 18 that requires the City—

19 ~~(A) to repay, within a 50-year period, the~~
 20 share of any construction cost of the City relat-
 21 ing to the Project; and

22 ~~(B) to pay the operation, maintenance, and~~
 23 replacement costs of the Project that are allo-
 24 cable to the City.

25 ~~(2) SHARE OF CONSTRUCTION COSTS.~~—

1 (A) IN GENERAL.—Subject to subpara-
 2 graph (B), the Secretary shall determine the
 3 share of the construction costs of the City relat-
 4 ing to the Project, based on the ability of the
 5 City to pay the construction costs of each facil-
 6 ity of the Project that is allocable to the City.

7 (B) MINIMUM PERCENTAGE.—The share
 8 of the construction costs of the City shall be at
 9 least 25 percent of the construction costs of the
 10 Project that are allocable to the City.

11 (3) EXCESS CONSTRUCTION COSTS.—Any con-
 12 struction costs of the Project allocable to providing
 13 capacity to deliver water to the City that are in ex-
 14 cess of the share of the City of the construction
 15 costs of the Project, as determined under paragraph
 16 (2), shall be nonreimbursable.

17 (4) GRANT FUNDS.—A grant from any other
 18 Federal source shall not be credited toward the
 19 amount required to be repaid by the City under a
 20 repayment contract.

21 (5) TITLE TRANSFER.—If title is transferred to
 22 the City prior to repayment under section 302(f),
 23 the City shall be required to provide assurances sat-
 24 isfactory to the Secretary of fulfillment of the re-
 25 maining repayment obligation of the City.

1 (6) OPERATION, MAINTENANCE AND REPLACE-
 2 MENT OBLIGATION.—The City shall pay the oper-
 3 ation, maintenance, and replacement costs for each
 4 facility of the Project that is allocable to the City.

5 (7) WATER DELIVERY SUBCONTRACT.—

6 (A) IN GENERAL.—Except as provided in
 7 subparagraph (B), the Secretary shall not enter
 8 into a contract under paragraph (1) with the
 9 City until the City has secured a water supply
 10 for the portion of the Project for which the City
 11 is responsible by entering into, as approved by
 12 the Secretary, a water delivery subcontract for
 13 a period of not less than 40 years beginning on
 14 the date on which the construction of any facil-
 15 ity of the Project serving the City is completed,
 16 but for a period not exceeding 99 years, with—

17 (i) the Nation, as authorized by the
 18 Contract; or

19 (ii) the Jicarilla Apache Nation, as
 20 authorized by the settlement contract be-
 21 tween the United States and the Jicarilla
 22 Apache Tribe, authorized by the Jicarilla
 23 Apache Tribe Water Rights Settlement Act
 24 (Public Law 102–441; 106 Stat. 2237).

1 (B) EFFECT.—Nothing in this para-
2 graph—

3 (i) prevents the City from obtaining
4 an alternate source of water for the por-
5 tion of the Project for which the City is re-
6 sponsible, subject to approval of the Sec-
7 retary and the State of New Mexico, acting
8 through the New Mexico Interstate Stream
9 Commission and the New Mexico State
10 Engineer; or

11 (ii) obligates the Nation or the
12 Jicarilla Apache Nation to enter into a
13 water delivery subcontract with the City.

14 (c) JICARILLA APACHE NATION CONTRACT.—

15 (1) CONTRACT AUTHORIZATION.—To the extent
16 consistent with this Act, the Secretary is authorized
17 to enter into a repayment contract with the Jicarilla
18 Apache Nation that requires the Jicarilla Apache
19 Nation—

20 (A) to repay, within a 50-year period, the
21 share of any construction cost of the Jicarilla
22 Apache Nation relating to the Project; and

23 (B) to pay the operation, maintenance, and
24 replacement costs of the Project that are allo-
25 cable to the Jicarilla Apache Nation.

1 (2) SHARE OF CONSTRUCTION COSTS.—

2 (A) IN GENERAL.—Subject to subpara-
3 graph (B), the Secretary shall determine the
4 share of the Jicarilla Apache Nation of the con-
5 struction costs of the Project, based on the abil-
6 ity of the Jicarilla Apache Nation to pay the
7 construction costs of the Project facilities that
8 are allocable to the Jicarilla Apache Nation.

9 (B) MINIMUM PERCENTAGE.—The share
10 of the Jicarilla Apache Nation under subpara-
11 graph (A) shall be at least 25 percent of the
12 construction costs of the Project that are allo-
13 cable to the Jicarilla Apache Nation.

14 (3) EXCESS CONSTRUCTION COSTS.—Any con-
15 struction costs of the Project allocable to providing
16 capacity to deliver water to the Jicarilla Apache Na-
17 tion that are in excess of the share of the Jicarilla
18 Apache Nation of the construction costs of the
19 Project, as determined under paragraph (2), shall be
20 nonreimbursable.

21 (4) GRANT FUNDS.—A grant from any other
22 Federal source shall not be credited toward the
23 share of the Jicarilla Apache Nation of construction
24 costs.

1 (5) NAVAJO INDIAN IRRIGATION PROJECT
2 COSTS.—The Jicarilla Apache Nation shall have no
3 obligation to repay any Navajo Indian Irrigation
4 Project construction costs that might otherwise be
5 allocable to the Jicarilla Apache Nation for use of
6 the Navajo Indian Irrigation Project facilities to
7 convey water to the Jicarilla Apache Nation.

8 (6) OPERATION, MAINTENANCE AND REPLACE-
9 MENT OBLIGATION.—The Jicarilla Apache Nation
10 shall pay the operation, maintenance, and replace-
11 ment costs relating to each facility of the Project
12 that are allocable to the Jicarilla Apache Nation.

13 (d) CAPITAL COST ALLOCATIONS.—For purposes of
14 determining the capital repayment requirements of the
15 Project Participants under this section, the Secretary shall
16 review and, as appropriate, update the report prepared by
17 the Bureau of Reclamation in the Draft Impact Statement
18 allocating capital construction costs for the Project.

19 (e) OPERATION, MAINTENANCE, AND REPLACEMENT
20 COST ALLOCATIONS.—For purposes of determining the
21 operation, maintenance, and replacement obligations of
22 the Project Participants under this section, the Secretary
23 shall review and, as appropriate, update the report pre-
24 pared by the Bureau of Reclamation in the Draft Impact

1 Statement that allocates operation, maintenance, and re-
2 placement costs for the Project.

3 ~~(f) TEMPORARY WAIVERS OF PAYMENTS.—~~

4 ~~(1) IN GENERAL.—~~On the date on which the
5 Project is substantially complete and the Nation re-
6 ceives a delivery of water generated by the Project,
7 the Secretary may waive, for a period of not more
8 than 10 years, the operation, maintenance, and re-
9 placement costs of the Project allocable to the Na-
10 tion that the Secretary determines are in excess of
11 the ability of the Nation to pay.

12 ~~(2) PAYMENT BY UNITED STATES.—~~Any oper-
13 ation, maintenance, or replacement costs waived by
14 the Secretary under paragraph (1) shall be paid by
15 the United States.

16 ~~(3) EFFECT ON CONTRACTS.—~~Failure of the
17 Secretary to waive costs under paragraph (1) be-
18 cause of a lack of availability of Federal funding to
19 pay the costs under paragraph (2) shall not alter the
20 obligations of the Nation or the United States under
21 a repayment contract.

22 ~~(4) TERMINATION OF AUTHORITY.—~~The au-
23 thority of the Secretary to waive costs under para-
24 graph (1) with respect to a Project facility trans-
25 ferred to the Nation under section 302(f) shall ter-

1 minate on the date on which the Project facility is
2 transferred.

3 **SEC. 305. USE OF NAVAJO NATION MUNICIPAL PIPELINE.**

4 In addition to use of the Navajo Nation Municipal
5 Pipeline to convey the Animas-La Plata Project water of
6 the Nation, the Nation may use the Navajo Nation Munic-
7 ipal Pipeline to convey water for other purposes (including
8 purposes relating to the Project).

9 **SEC. 306. AUTHORIZATION OF CONJUNCTIVE USE WELLS.**

10 (a) CONJUNCTIVE GROUNDWATER DEVELOPMENT
11 PLAN.—Not later than 1 year after the date of enactment
12 of this Act, the Nation, in consultation with the Secretary,
13 shall complete a conjunctive groundwater development
14 plan for the wells described in subsections (b) and (c).

15 (b) WELLS IN THE SAN JUAN RIVER BASIN.—In ac-
16 cordance with the conjunctive groundwater development
17 plan, the Secretary may construct or rehabilitate wells and
18 related pipeline facilities to provide capacity for the diver-
19 sion and distribution of not more than 1,670 acre-feet of
20 groundwater in the San Juan River Basin in the State
21 of New Mexico for municipal and domestic uses.

22 (c) WELLS IN THE LITTLE COLORADO AND RIO
23 GRANDE BASINS.—

24 (1) IN GENERAL.—In accordance with the
25 Project and conjunctive groundwater development

1 plan for the Nation, the Secretary may construct or
2 rehabilitate wells and related pipeline facilities to
3 provide capacity for the diversion and distribution
4 of—

5 (A) not more than 680 acre-feet of ground-
6 water in the Little Colorado River Basin in the
7 State of New Mexico;

8 (B) not more than 80 acre-feet of ground-
9 water in the Rio Grande Basin in the State of
10 New Mexico; and

11 (C) not more than 770 acre-feet of ground-
12 water in the Little Colorado River Basin in the
13 State of Arizona.

14 (2) USE.—Groundwater diverted and distrib-
15 uted under paragraph (1) shall be used for munic-
16 ipal and domestic uses.

17 (d) ACQUISITION OF LAND.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the Secretary may acquire any land or in-
20 terest in land that is necessary for the construction,
21 operation, and maintenance of the wells and related
22 pipeline facilities authorized under subsections (b)
23 and (c).

1 (2) LIMITATION.—Nothing in this subsection
2 authorizes the Secretary to condemn water rights for
3 the purposes described in paragraph (1).

4 (e) CONDITION.—The Secretary shall not commence
5 any construction activity relating to the wells described in
6 subsections (b) and (c) until the Secretary executes the
7 Agreement.

8 (f) CONVEYANCE OF WELLS.—

9 (1) IN GENERAL.—The Secretary shall enter
10 into an agreement with the Nation to convey to the
11 Nation—

12 (A) any well or related pipeline facility
13 constructed or rehabilitated under subsections
14 (a) and (b) after the wells and related facilities
15 have been completed; and

16 (B) any land or interest in land acquired
17 by the United States for the construction, oper-
18 ation, and maintenance of the well or related
19 pipeline facility.

20 (2) OPERATION, MAINTENANCE, AND REPLACE-
21 MENT.—On completion of a conveyance under para-
22 graph (1), the Nation shall assume responsibility for
23 the operation, maintenance, and replacement of the
24 well or related pipeline facility conveyed.

1 ~~(3) EFFECT OF CONVEYANCE.~~—The conveyance
 2 to the Nation of the conjunctive use wells under
 3 paragraph ~~(1)~~ shall not affect the application of the
 4 Endangered Species Act of 1973 ~~(16 U.S.C. 1531 et~~
 5 ~~seq.)~~.

6 ~~(g) USE OF PROJECT FACILITIES.~~—The capacities of
 7 the treatment facilities, main pipelines, and lateral pipe-
 8 lines of the Project authorized by section 302(b) may be
 9 used to treat and convey groundwater to Nation commu-
 10 nities if the Nation provides for payment of the operation;
 11 maintenance, and replacement costs associated with the
 12 use of the facilities or pipelines.

13 ~~(h) LIMITATIONS.~~—The diversion and use of ground-
 14 water by wells constructed or rehabilitated under this sec-
 15 tion shall be made in a manner consistent with applicable
 16 Federal and State law.

17 **SEC. 307. SAN JUAN RIVER NAVAJO IRRIGATION PROJECTS.**

18 ~~(a) REHABILITATION.~~—Subject to subsection (b), the
 19 Secretary shall rehabilitate—

20 ~~(1) the Fruitland-Cambridge Irrigation Project~~
 21 to serve not more than ~~3,335~~ acres of land, which
 22 shall be considered to be the total serviceable area
 23 of the Project; and

24 ~~(2) the Hogback-Cudei Irrigation Project to~~
 25 serve not more than ~~8,830~~ acres of land, which shall

1 be considered to be the total serviceable area of the
2 Project.

3 ~~(b) CONDITION.—The Secretary shall not commence~~
4 ~~any construction activity relating to the rehabilitation of~~
5 ~~the Fruitland-Cambridge Irrigation Project or the Hog-~~
6 ~~back-Cudei Irrigation Project under subsection (a) until~~
7 ~~the Secretary executes the Agreement.~~

8 ~~(c) OPERATION, MAINTENANCE, AND REPLACEMENT~~
9 ~~OBLIGATION.—Upon the date of completion of the reha-~~
10 ~~bilitation, the Nation shall assume the obligations for the~~
11 ~~operation, maintenance, and replacement of each facility~~
12 ~~rehabilitated under this section.~~

13 **SEC. 308. OTHER IRRIGATION PROJECTS.**

14 ~~(a) IN GENERAL.—Not later than 2 years after the~~
15 ~~date of enactment of this Act, the Secretary, in consulta-~~
16 ~~tion with the State of New Mexico (acting through the~~
17 ~~Interstate Stream Commission) and the Non-Navajo Irri-~~
18 ~~gation Districts that elect to participate, shall—~~

19 ~~(1) conduct a study of Non-Navajo Irrigation~~
20 ~~District diversion and ditch facilities; and~~

21 ~~(2) based on the study, identify and prioritize~~
22 ~~a list of projects, with associated cost estimates, that~~
23 ~~are recommended to be implemented to repair, reha-~~
24 ~~bilitate, or reconstruct irrigation diversion and ditch~~
25 ~~facilities to improve water use efficiency.~~

1 (b) GRANTS.—The Secretary may provide grants to;
 2 and enter into cooperative agreements with, the Non-Nav-
 3 ajo Irrigation Districts to plan, design, or otherwise imple-
 4 ment the projects identified under subsection (a)(2).

5 (c) COST-SHARING.—

6 (1) FEDERAL SHARE.—The Federal share of
 7 the total cost of carrying out a project under sub-
 8 section (b) shall be not more than 50 percent.

9 (2) FORM.—The non-Federal share required
 10 under paragraph (1) may be in the form of in-kind
 11 contributions, including the contribution of any valu-
 12 able asset or service that the Secretary determines
 13 would substantially contribute to a project carried
 14 out under subsection (b).

15 (3) STATE CONTRIBUTION.—The Secretary may
 16 accept from the State of New Mexico a partial or
 17 total contribution toward the non-Federal share for
 18 a project carried out under subsection (b).

19 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) AUTHORIZATION OF APPROPRIATIONS FOR
 21 NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY
 22 PROJECT.—

23 (1) IN GENERAL.—There is authorized to be
 24 appropriated to the Secretary to construct the

1 Project such sums as are necessary for the period of
 2 fiscal years 2008 through 2022.

3 ~~(2) ADJUSTMENTS.—~~The amount under para-
 4 graph (1) shall be adjusted by such amounts as may
 5 be required by reason of changes since 2005 in con-
 6 struction costs, as indicated by engineering cost indi-
 7 ces applicable to the types of construction involved.

8 ~~(3) USE.—~~In addition to the uses authorized
 9 under paragraph (1), amounts made available under
 10 that paragraph may be used for the conduct of re-
 11 lated activities to comply with Federal environmental
 12 laws.

13 ~~(b) APPROPRIATIONS FOR CONJUNCTIVE USE~~
 14 ~~WELLS.—~~

15 ~~(1) SAN JUAN WELLS.—~~There is authorized to
 16 be appropriated to the Secretary for the construction
 17 or rehabilitation of conjunctive use wells under sec-
 18 tion 306(b) \$30,000,000, as adjusted under para-
 19 graph (3), for the period of fiscal years 2008
 20 through 2018.

21 ~~(2) WELLS IN THE LITTLE COLORADO AND RIO~~
 22 ~~GRANDE BASINS.—~~There is authorized to be appro-
 23 priated to the Secretary for the construction or reha-
 24 bilitation of conjunctive use wells under section

306(c) such sums as are necessary for the period of
fiscal years 2008 through 2024.

~~(3) ADJUSTMENTS.—~~The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2004 in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved.

~~(4) NONREIMBURSABLE EXPENDITURES.—~~
Amounts made available under paragraphs (1) and (2) shall be nonreimbursable to the United States.

~~(5) USE.—~~In addition to the uses authorized under paragraphs (1) and (2), amounts made available under that paragraph may be used for the conduct of related activities to comply with Federal environmental laws.

~~(c) SAN JUAN RIVER IRRIGATION PROJECTS.—~~

~~(1) IN GENERAL.—~~There are authorized to be appropriated to the Secretary—

~~(A) to carry out section 307(a)(1), not more than \$7,700,000, as adjusted under paragraph (2), for the period of fiscal years 2008 through 2014; and~~

~~(B) to carry out section 307(a)(2), not more than \$15,400,000, as adjusted under~~

1 paragraph (2), for the period of fiscal years
 2 2008 through 2017.

3 ~~(2) ADJUSTMENT.—~~The amounts made avail-
 4 able under paragraph (1) shall be adjusted by such
 5 amounts as may be required by reason of changes
 6 since January 1, 2004, in construction costs, as in-
 7 dicated by engineering cost indices applicable to the
 8 types of construction involved in the rehabilitation.

9 ~~(3) NONREIMBURSABLE EXPENDITURES.—~~
 10 Amounts made available under this subsection shall
 11 be nonreimbursable to the United States.

12 ~~(d) OTHER IRRIGATION PROJECTS.—~~There are au-
 13 thorized to be appropriated to the Secretary to carry out
 14 section 308 \$11,000,000 for the period of fiscal years
 15 2008 through 2017.

16 ~~(e) CULTURAL RESOURCES.—~~

17 ~~(1) IN GENERAL.—~~The Secretary may use not
 18 more than 4 percent of amounts made available
 19 under subsections (a) and (b) for the survey, recov-
 20 ery, protection, preservation, and display of archae-
 21 ological resources in the area of a Project facility or
 22 conjunctive use well.

23 ~~(2) NONREIMBURSABLE EXPENDITURES.—~~Any
 24 amounts made available under paragraph (1) shall

1 be nonreimbursable and nonreturnable to the United
2 States.

3 ~~(f) FISH AND WILDLIFE FACILITIES.—~~

4 ~~(1) IN GENERAL.—~~In association with the de-
5 velopment of the Project, the Secretary may use not
6 more than 4 percent of amounts made available
7 under subsections (a) and (b) to purchase land and
8 construct and maintain facilities to mitigate the loss
9 of, and improve conditions for the propagation of,
10 fish and wildlife if any such purchase, construction,
11 or maintenance will not affect the operation of any
12 water project or use of water.

13 ~~(2) NONREIMBURSABLE EXPENDITURES.—~~Any
14 amounts expended under paragraph (1) shall be
15 nonreimbursable and nonreturnable to the United
16 States.

17 **TITLE IV—NAVAJO NATION** 18 **WATER RIGHTS**

19 **SEC. 401. AGREEMENT.**

20 ~~(a) AGREEMENT APPROVAL.—~~

21 ~~(1) APPROVAL BY CONGRESS.—~~Except to the
22 extent that any provision of the Agreement conflicts
23 with this Act, Congress approves, ratifies, and incor-
24 porates by reference the Agreement (including any

1 amendments to the Agreement that are executed to
 2 make the Agreement consistent with this Act).

3 ~~(2) EXECUTION BY SECRETARY.~~—The Sec-
 4 retary, acting on behalf of the United States, shall
 5 enter into the Agreement to the extent that the
 6 Agreement does not conflict with this Act, includ-
 7 ing—

8 (A) any exhibits to the Agreement requir-
 9 ing the signature of the Secretary; and

10 (B) any amendments to the Agreement
 11 necessary to make the Agreement consistent
 12 with this Act.

13 ~~(3) AUTHORITY OF SECRETARY.~~—The Sec-
 14 retary may carry out any action that the Secretary
 15 determines is necessary or appropriate to implement
 16 the Agreement, the Contract, and this section.

17 ~~(4) ADMINISTRATION OF NAVAJO RESERVOIR~~
 18 ~~RELEASES.~~—The State of New Mexico may admin-
 19 ister releases of stored water from Navajo Reservoir
 20 in accordance with subparagraph 9.1 of the Agree-
 21 ment.

22 ~~(b) WATER AVAILABLE UNDER CONTRACT.~~—

23 ~~(1) QUANTITIES OF WATER AVAILABLE.~~—

24 ~~(A) IN GENERAL.~~—Water shall be made
 25 available annually under the Contract for

projects in the State of New Mexico supplied from the Navajo Reservoir and the San Juan River (including tributaries of the River) under New Mexico State Engineer File Numbers 2849, 2883, and 3215 in the quantities described in subparagraph (B).

(B) WATER QUANTITIES.—The quantities of water referred to in subparagraph (A) are as follows:

	Diver- sion (acre- feet/ year)	Deple- tion (acre- feet/ year)
Navajo Indian Irrigation Project	508,000	270,000
Northwestern New Mexico Rural Water Supply Project	22,650	20,780
Animas-La Plata Project	4,680	2,340
Total	535,330	293,120

(C) MAXIMUM QUANTITY.—A diversion of water to the Nation under the Contract for a project described in subparagraph (B) shall not exceed the quantity of water necessary to supply the amount of depletion for the project.

(D) TERMS, CONDITIONS, AND LIMITATIONS.—The diversion and use of water under the Contract shall be subject to and consistent with the terms, conditions, and limitations of the Agreement, this Act, and any other applicable law.

1 (2) AMENDMENTS TO CONTRACT.—The Sec-
2 retary, with the consent of the Nation, may amend
3 the Contract if the Secretary determines that the
4 amendment is—

5 (A) consistent with the Agreement; and

6 (B) in the interest of conserving water or
7 facilitating beneficial use by the Nation or a
8 subcontractor of the Nation.

9 (3) RIGHTS OF THE NATION.—The Nation may,
10 under the Contract—

11 (A) use tail water, wastewater, and return
12 flows attributable to a use of the water by the
13 Nation or a subcontractor of the Nation if—

14 (i) the depletion of water does not ex-
15 ceed the quantities described in paragraph
16 (1); and

17 (ii) the use of tail water, wastewater,
18 or return flows is consistent with the
19 terms, conditions, and limitations of the
20 Agreement, the Resolution, and any other
21 applicable law; and

22 (B) change a point of diversion, change a
23 purpose or place of use, and transfer a right for
24 depletion under this Act (except for a point of
25 diversion, purpose or place of use, or right for

depletion for use in the State of Arizona under section 303(b)(2)(D)), to another use, purpose, place, or depletion in the State of New Mexico to meet a water resource or economic need of the Nation if—

(i) the change or transfer is subject to and consistent with the terms of the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Contract, and any other applicable law; and

(ii) a change or transfer of water use by the Nation does not alter any obligation of the United States, the Nation, or another party to pay or repay project construction, operation, maintenance, or replacement costs under this Act and the Contract.

(c) SUBCONTRACTS.—

(1) IN GENERAL.—

(A) SUBCONTRACTS BETWEEN NATION AND THIRD PARTIES.—The Nation may enter into subcontracts for the delivery of Project water under the Contract to third parties for any beneficial use in the State of New Mexico

(on or off land held by the United States in trust for the Nation or a member of the Nation or land held in fee by the Nation).

(B) APPROVAL REQUIRED.—A subcontract entered into under subparagraph (A) shall not be effective until approved by the Secretary in accordance with this subsection and the Contract.

(C) SUBMITTAL.—The Nation shall submit to the Secretary for approval or disapproval any subcontract entered into under this subsection.

(D) DEADLINE.—The Secretary shall approve or disapprove a subcontract submitted to the Secretary under subparagraph (C) not later than the later of—

(i) the date that is 180 days after the date on which the subcontract is submitted to the Secretary; and

(ii) the date that is 60 days after the date on which a subcontractor complies with—

(I) section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

1 (H) any other requirement of
2 Federal law.

3 (E) ENFORCEMENT.—A party to a sub-
4 contract may enforce the deadline described in
5 subparagraph (D) under section 1361 of title
6 28, United States Code.

7 (F) COMPLIANCE WITH OTHER LAW.—A
8 subcontract described in subparagraph (A) shall
9 comply with the Agreement, the Partial Final
10 Decree described in paragraph 3.0 of the Agree-
11 ment, and any other applicable law.

12 (2) ALIENATION.—

13 (A) PERMANENT ALIENATION.—The Na-
14 tion shall not permanently alienate any right
15 granted to the Nation under the Contract.

16 (B) MAXIMUM TERM.—The term of any
17 water use subcontract (including a renewal)
18 under this subsection shall be not more than 99
19 years.

20 (3) NONINTERCOURSE ACT COMPLIANCE.—This
21 subsection—

22 (A) provides congressional authorization
23 for the subcontracting rights of the Nation; and

1 (B) is deemed to fulfill any requirement
 2 that may be imposed by section 2116 of the Re-
 3 vised Statutes (25 U.S.C. 177).

4 (4) FORFEITURE.—The nonuse of the water
 5 supply secured by a subcontractor of the Nation
 6 under this subsection shall not result in forfeiture,
 7 abandonment, relinquishment, or other loss of any
 8 part of a right decreed to the Nation under the Con-
 9 tract or this section.

10 (5) NO PER CAPITA PAYMENTS.—No part of
 11 the revenue from a water use subcontract under this
 12 subsection shall be distributed to any member of the
 13 Nation on a per capita basis.

14 (d) WATER LEASES NOT REQUIRING SUB-
 15 CONTRACTS.—

16 (1) AUTHORITY OF NATION.—

17 (A) IN GENERAL.—The Nation may lease,
 18 contract, or otherwise transfer to another party
 19 or to another purpose or place of use in the
 20 State of New Mexico (on or off land that is held
 21 by the United States in trust for the Nation or
 22 a member of the Nation or held in fee by the
 23 Nation) a water right that—

24 (i) is decreed to the Nation under the
 25 Agreement; and

1 (ii) is not subject to the Contract.

2 (B) COMPLIANCE WITH OTHER LAW.—In
3 carrying out an action under this subsection,
4 the Nation shall comply with the Agreement,
5 the Partial Final Decree described in paragraph
6 3.0 of the Agreement, the Supplemental Partial
7 Final Decree described in paragraph 4.0 of the
8 Agreement, and any other applicable law.

9 (2) ALIENATION; MAXIMUM TERM.—

10 (A) ALIENATION.—The Nation shall not
11 permanently alienate any right granted to the
12 Nation under the Agreement.

13 (B) MAXIMUM TERM.—The term of any
14 water use lease, contract, or other arrangement
15 (including a renewal) under this subsection
16 shall be not more than 99 years.

17 (3) NONINTERCOURSE ACT COMPLIANCE.—This
18 subsection—

19 (A) provides congressional authorization
20 for the lease, contracting, and transfer of any
21 water right described in paragraph (1)(A); and

22 (B) is deemed to fulfill any requirement
23 that may be imposed by the provisions of sec-
24 tion 2116 of the Revised Statutes (25 U.S.C.
25 177).

1 (4) FORFEITURE.—The nonuse of a water right
 2 of the Nation by a lessee or contractor to the Nation
 3 under this subsection shall not result in forfeiture,
 4 abandonment, relinquishment, or other loss of any
 5 part of a right decreed to the Nation under the Con-
 6 tract or this section.

7 (c) HYDROGRAPHIC SURVEY.—

8 (1) PREPARATION.—The Secretary, on behalf of
 9 the United States, shall prepare a hydrographic sur-
 10 vey under the joint supervision of the Secretary and
 11 the State of New Mexico (acting through the New
 12 Mexico State Engineer) to identify and quantify any
 13 historic or existing diversion or use of water (includ-
 14 ing from surface water and underground water
 15 sources) by the Nation or a member of the Nation
 16 from the San Juan River Basin in the State of New
 17 Mexico, as described in subparagraph 4.2 of the
 18 Agreement.

19 (2) AUTHORIZATION OF APPROPRIATIONS.—

20 (A) IN GENERAL.—Subject to subpara-
 21 graph (B), there is authorized to be appro-
 22 priated to the Bureau of Indian Affairs to carry
 23 out paragraph (1) \$5,000,000 for the period of
 24 fiscal years 2008 through 2013.

1 (B) ~~ADJUSTMENT.~~—The amounts made
 2 available under subparagraph (A) shall be ad-
 3 justed by such amounts as are necessary to ac-
 4 count for increases in the costs of preparing a
 5 hydrographic survey after January 1, 2004, as
 6 determined using cost indices applicable to the
 7 types of technical and engineering work in-
 8 volved in preparing the hydrographic survey.

9 (C) ~~NONREIMBURSABLE EXPENDI-~~
 10 ~~TURES.~~—Any amounts made available under
 11 this paragraph shall be nonreimbursable to the
 12 United States.

13 (f) ~~NULLIFICATION.~~—

14 (1) ~~DEADLINES.~~—

15 (A) ~~IN GENERAL.~~—In carrying out this
 16 section, the following deadlines apply with re-
 17 spect to implementation of the Agreement:

18 (i) ~~AGREEMENT.~~—Not later than De-
 19 cember 31, 2008, the Secretary shall exe-
 20 cute the Agreement.

21 (ii) ~~CONTRACT.~~—Not later than De-
 22 cember 31, 2009, the Secretary and the
 23 Nation shall execute the Contract.

24 (iii) ~~PARTIAL FINAL DECREE.~~—Not
 25 later than December 31, 2012, the court in

1 the stream adjudication shall have entered
2 the Partial Final Decree described in para-
3 graph 3.0 of the Agreement.

4 (iv) HYDROGRAPHIC SURVEY.—Not
5 later than December 31, 2013, the Sec-
6 retary shall complete the hydrographic sur-
7 vey described in subsection (c).

8 (v) FRUITLAND-CAMBRIDGE IRRIGA-
9 TION PROJECT.—Not later than December
10 31, 2014, the rehabilitation construction of
11 the Fruitland-Cambridge Irrigation Project
12 authorized under section 307(a)(1) shall be
13 completed.

14 (vi) SUPPLEMENTAL PARTIAL FINAL
15 DECREE.—Not later than December 31,
16 2015, the court in the stream adjudication
17 shall enter the Supplemental Partial Final
18 Decree described in subparagraph 4.0 of
19 the Agreement.

20 (vii) HOGBACK-CUDEI IRRIGATION
21 PROJECT.—Not later than December 31,
22 2017, the rehabilitation construction of the
23 Hogback-Cudei Irrigation Project author-
24 ized under section 307(a)(2) shall be com-
25 pleted.

1 (viii) TRUST FUND.—Not later than
 2 December 31, 2018, the United States
 3 shall make all deposits into the Trust
 4 Fund under section 402.

5 (ix) CONJUNCTIVE WELLS.—Not later
 6 than December 31, 2018, the funds au-
 7 thorized to be appropriated under section
 8 309(b)(1) for the conjunctive use wells au-
 9 thorized under section 306(b) should be
 10 appropriated.

11 (x) NORTHWESTERN NEW MEXICO
 12 RURAL WATER SUPPLY PROJECT.—Not
 13 later than December 31, 2022, the con-
 14 struction of all Project facilities shall be
 15 completed.

16 (B) EXTENSION.—A deadline described in
 17 subparagraph (A) may be extended if the Na-
 18 tion, the United States (acting through the Sec-
 19 retary), and the State of New Mexico (acting
 20 through the New Mexico Interstate Stream
 21 Commission) agree that an extension is reason-
 22 ably necessary.

23 (2) REVOCABILITY OF AGREEMENT, CONTRACT
 24 AND AUTHORIZATIONS.—

1 (A) PETITION.—If the Nation determines
 2 that a deadline described in paragraph (1)(A) is
 3 not substantially met, the Nation may submit
 4 to the court in the stream adjudication a peti-
 5 tion to enter an order terminating the Agree-
 6 ment and Contract.

7 (B) TERMINATION.—On issuance of an
 8 order to terminate the Agreement and Contract
 9 under subparagraph (A)—

10 (i) the Trust Fund shall be termi-
 11 nated;

12 (ii) the balance of the Trust Fund
 13 shall be deposited in the general fund of
 14 the Treasury;

15 (iii) the authorizations for construe-
 16 tion and rehabilitation of water projects
 17 under this Act shall be revoked and any
 18 Federal activity related to that construe-
 19 tion and rehabilitation shall be suspended;
 20 and

21 (iv) this title and titles I and III shall
 22 be null and void.

23 (3) CONDITIONS NOT CAUSING NULLIFICATION
 24 OF SETTLEMENT.—

1 (A) IN GENERAL.—If a condition described
 2 in subparagraph (B) occurs, the Agreement and
 3 Contract shall not be nullified or terminated.

4 (B) CONDITIONS.—The conditions referred
 5 to in subparagraph (A) are as follows:

6 (i) A lack of right to divert at the ca-
 7 pacities of conjunctive use wells con-
 8 structed or rehabilitated under section
 9 306.

10 (ii) A failure—

11 (I) to determine or resolve an ac-
 12 counting of the use of water under
 13 this Act in the State of Arizona;

14 (II) to obtain a necessary water
 15 right for the consumptive use of water
 16 in Arizona;

17 (III) to contract for the delivery
 18 of water for use in Arizona; or

19 (IV) to construct and operate a
 20 lateral facility to deliver water to a
 21 community of the Nation in Arizona,
 22 under the Project.

23 (4) RIGHTS OF THE NATION.—A tribal right
 24 under the Contract, a water right adjudicated con-
 25 sistent with the Contract in the stream adjudication

1 by the Partial Final Decree described in paragraph
 2 3.0 of the Agreement, and any other tribal water
 3 right stipulated, adjudicated, or decreed as described
 4 in the Agreement and this Act shall be held in trust
 5 by the United States in perpetuity for the benefit of
 6 the Nation.

7 ~~(g) EFFECT ON RIGHTS OF INDIAN TRIBES.—~~

8 (1) IN GENERAL.—Except as provided in para-
 9 graph (2), nothing in the Agreement, the Contract,
 10 or this section quantifies or adversely affects the
 11 land and water rights, or claims or entitlements to
 12 water, of any Indian tribe or community other than
 13 the rights, claims, or entitlements of the Nation in,
 14 to, and from the San Juan River Basin in the State
 15 of New Mexico.

16 (2) EXCEPTION.—The right of the Nation to
 17 use water under water rights the Nation has in
 18 other river basins in the State of New Mexico shall
 19 be forborne to the extent that the Nation supplies
 20 the uses for which the water rights exist by diver-
 21 sions of water from the San Juan River Basin under
 22 the Project consistent with subparagraph 9.13 of the
 23 Agreement.

1 **SEC. 402. TRUST FUND.**

2 (a) ~~ESTABLISHMENT.~~—There is established in the
3 Treasury a fund to be known as the “Navajo Nation
4 Water Resources Development Trust Fund”, consisting
5 of—

6 (1) such amounts as are appropriated to the
7 Trust Fund under subsection (f); and

8 (2) any interest earned on investment of
9 amounts in the Trust Fund under subsection (d).

10 (b) ~~USE OF FUNDS.~~—The Nation may use amounts
11 in the Trust Fund—

12 (1) to investigate, construct, operate, maintain,
13 or replace water project facilities, including facilities
14 conveyed to the Nation under this Act; and

15 (2) to investigate, implement, or improve a
16 water conservation measure (including a metering or
17 monitoring activity) necessary for the Nation to
18 make use of a water right of the Nation under the
19 Agreement.

20 (c) ~~MANAGEMENT.~~—The Secretary shall manage the
21 Trust Fund, invest amounts in the Trust Fund, and make
22 amounts available from the Trust Fund for distribution
23 to the Nation in accordance with the American Indian
24 Trust Fund Management Reform Act of 1994 (25 U.S.C.
25 4001 et seq.).

1 (d) INVESTMENT OF THE TRUST FUND.—The Sec-
 2 retary shall invest amounts in the Trust Fund in accord-
 3 ance with—

4 (1) the Act of April 1, 1880 (25 U.S.C. 161);

5 (2) the first section of the Act of June 24,
 6 1938 (25 U.S.C. 162a); and

7 (3) the American Indian Trust Fund Manage-
 8 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).

9 (e) CONDITIONS FOR EXPENDITURES AND WITH-
 10 DRAWALS.—

11 (1) TRIBAL MANAGEMENT PLAN.—

12 (A) IN GENERAL.—Subject to paragraph
 13 (7), on approval by the Secretary of a tribal
 14 management plan in accordance with the Amer-
 15 ican Indian Trust Fund Management Reform
 16 Act of 1994 (25 U.S.C. 4001 et seq.), the Na-
 17 tion may withdraw all or a portion of the
 18 amounts in the Trust Fund.

19 (B) REQUIREMENTS.—In addition to any
 20 requirements under the American Indian Trust
 21 Fund Management Reform Act of 1994 (25
 22 U.S.C. 4001 et seq.), the tribal management
 23 plan shall require that the Nation only use
 24 amounts in the Trust Fund for the purposes
 25 described in subsection (b), including the identi-

1 fication of water conservation measures to be
2 implemented in association with the agricultural
3 water use of the Nation.

4 (2) ENFORCEMENT.—The Secretary may take
5 judicial or administrative action to enforce the provi-
6 sions of any tribal management plan to ensure that
7 any amounts withdrawn from the Trust Fund are
8 used in accordance with this Act.

9 (3) NO LIABILITY.—Neither the Secretary nor
10 the Secretary of the Treasury shall be liable for the
11 expenditure or investment of any amounts with-
12 drawn from the Trust Fund by the Nation.

13 (4) EXPENDITURE PLAN.—

14 (A) IN GENERAL.—The Nation shall sub-
15 mit to the Secretary for approval an expendi-
16 ture plan for any portion of the amounts in the
17 Trust Fund made available under this section
18 that the Nation does not withdraw under this
19 subsection.

20 (B) DESCRIPTION.—The expenditure plan
21 shall describe the manner in which, and the
22 purposes for which, funds of the Nation remain-
23 ing in the Trust Fund will be used.

24 (C) APPROVAL.—On receipt of an expendi-
25 ture plan under subparagraph (A), the Sec-

1 retary shall approve the plan if the Secretary
2 determines that the plan is reasonable and con-
3 sistent with this Act.

4 ~~(5) ANNUAL REPORT.~~—The Nation shall sub-
5 mit to the Secretary an annual report that describes
6 any expenditures from the Trust Fund during the
7 year covered by the report.

8 ~~(6) LIMITATION.~~—No portion of the amounts in
9 the Trust Fund shall be distributed to any Nation
10 member on a per capita basis.

11 ~~(7) CONDITIONS.~~—Any amount authorized to
12 be appropriated to the Trust Fund under subsection
13 ~~(f)~~ shall not be available for expenditure or with-
14 drawal—

15 ~~(A)~~ before December 31, 2018; and

16 ~~(B)~~ until the date on which the court in
17 the stream adjudication has entered—

18 ~~(i)~~ the Partial Final Decree described
19 in paragraph 3.0 of the Agreement; and

20 ~~(ii)~~ the Supplemental Partial Final
21 Decree described in paragraph 4.0 of the
22 Agreement.

23 ~~(f) AUTHORIZATION OF APPROPRIATIONS.~~—There is
24 authorized to be appropriated for deposit in the Trust
25 Fund—

1 (1) \$6,000,000 for each of fiscal years 2008
2 through 2012; and

3 (2) \$4,000,000 for each of fiscal years 2013
4 through 2017.

5 **SEC. 403. WAIVERS AND RELEASES.**

6 (a) **EXECUTION.**—The Nation, on behalf of itself and
7 members of the Nation (other than members in their ca-
8 pacity as allottees), and the United States, acting through
9 the Secretary and in its capacity as trustee for the Nation,
10 shall execute waivers and releases in accordance with
11 paragraph 7.0 of the Agreement.

12 (b) **RESERVATION.**—Notwithstanding subsection (a),
13 the Nation and its members (including members in their
14 capacity as allottees) and the United States, as trustee
15 for the Nation and allottees, shall retain the rights and
16 claims specified in paragraph 7.0 of the Agreement.

17 (c) **EFFECTIVE DATE.**—

18 (1) **IN GENERAL.**—The waivers and releases de-
19 scribed in subsection (a) shall be effective on the
20 date on which the Secretary publishes in the Federal
21 Register a statement of findings documenting that
22 each of the deadlines described in section 401(f)(1)
23 have been met.

24 (2) **DEADLINE.**—If the deadlines in section
25 401(f)(1)(A) have not been met by the later of

1 ~~March 1, 2023, or the date of any extension under~~
 2 ~~section 401(f)(1)(B)—~~

3 ~~(A) the waivers and releases described in~~
 4 ~~subsection (a) shall be of no effect; and~~
 5 ~~(B) section 401(f)(2)(B) shall apply.~~

6 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

7 (a) *SHORT TITLE.*—*This Act may be cited as the*
 8 *“Northwestern New Mexico Rural Water Projects Act”.*

9 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 10 *Act is as follows:*

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Compliance with environmental laws.
Sec. 4. No reallocation of costs.
Sec. 5. Interest rate.

**TITLE I—AMENDMENTS TO THE COLORADO RIVER STORAGE
 PROJECT ACT AND PUBLIC LAW 87–483**

Sec. 101. Amendments to the Colorado River Storage Project Act.
Sec. 102. Amendments to Public Law 87–483.
Sec. 103. Effect on Federal water law.

TITLE II—RECLAMATION WATER SETTLEMENTS FUND

Sec. 201. Reclamation Water Settlements Fund.

TITLE III—NAVAJO-GALLUP WATER SUPPLY PROJECT

Sec. 301. Purposes.
Sec. 302. Authorization of Navajo-Gallup Water Supply Project.
Sec. 303. Delivery and use of Navajo-Gallup Water Supply Project water.
Sec. 304. Project contracts.
Sec. 305. Navajo Nation Municipal Pipeline.
Sec. 306. Authorization of conjunctive use wells.
Sec. 307. San Juan River Navajo Irrigation Projects.
Sec. 308. Other irrigation projects.
Sec. 309. Authorization of appropriations.

TITLE IV—NAVAJO NATION WATER RIGHTS

Sec. 401. Agreement.
Sec. 402. Trust Fund.
Sec. 403. Waivers and releases.
Sec. 404. Water rights held in trust.

1 **SEC. 2. DEFINITIONS.**

2 *In this Act:*

3 (1) *AAMODT ADJUDICATION.*—*The term “Aamodt*
 4 *adjudication” means the general stream adjudication*
 5 *that is the subject of the civil action entitled “State*
 6 *of New Mexico, ex rel. State Engineer and United*
 7 *States of America, Pueblo de Nambe, Pueblo de*
 8 *Pojoaque, Pueblo de San Ildefonso, and Pueblo de*
 9 *Tesuque v. R. Lee Aamodt, et al.”, No. 66 CV 6639*
 10 *MV/LCS (D.N.M.).*

11 (2) *ABEYTA ADJUDICATION.*—*The term “Abeyta*
 12 *adjudication” means the general stream adjudication*
 13 *that is the subject of the civil actions entitled “State*
 14 *of New Mexico v. Abeyta and State of New Mexico v.*
 15 *Arrellano”, Civil Nos. 7896–BB (D.N.M) and 7939–*
 16 *BB (D.N.M.) (consolidated).*

17 (3) *ACRE-FEET.*—*The term “acre-feet” means*
 18 *acre-feet per year.*

19 (4) *AGREEMENT.*—*The term “Agreement” means*
 20 *the agreement among the State of New Mexico, the*
 21 *Nation, and the United States setting forth a stipu-*
 22 *lated and binding agreement signed by the State of*
 23 *New Mexico and the Nation on April 19, 2005.*

24 (5) *ALLOTTEE.*—*The “allottee” means a person*
 25 *that holds a beneficial real property interest in a*
 26 *Navajo allotment that—*

1 (A) is located within the Navajo Reserva-
2 tion or the State of New Mexico;

3 (B) is held in trust by the United States;
4 and

5 (C) was originally granted to an individual
6 member of the Nation by public land order or
7 otherwise.

8 (6) ANIMAS-LA PLATA PROJECT.—The term
9 “Animas-La Plata Project” has the meaning given
10 the term in section 3 of Public Law 100–585 (102
11 Stat. 2973), including Ridges Basin Dam, Lake
12 Nighthorse, the Navajo Nation Municipal Pipeline,
13 and any other features or modifications made pursu-
14 ant to the Colorado Ute Settlement Act Amendments
15 of 2000 (Public Law 106–554; 114 Stat. 2763A–258).

16 (7) CITY.—The term “City” means the city of
17 Gallup, New Mexico, or a designee of the City, with
18 authority to provide water to the Gallup, New Mexico
19 service area.

20 (8) COMPACT.—The term “Compact” means the
21 Upper Colorado River Basin Compact as consented to
22 by the Act of April 6, 1949 (63 Stat. 31, chapter 48).

23 (9) CONTRACT.—The term “Contract” means the
24 contract between the United States and the Nation
25 setting forth certain commitments, rights, and obliga-

1 *tions of the United States and the Nation, as de-*
 2 *scribed in paragraph 6.0 of the Agreement.*

3 (10) *DEPLETION.*—*The term “depletion” means*
 4 *the depletion of the flow of the San Juan River*
 5 *stream system in the State of New Mexico by a par-*
 6 *ticular use of water (including any depletion incident*
 7 *to the use) and represents the diversion from the*
 8 *stream system by the use, less return flows to the*
 9 *stream system from the use.*

10 (11) *DRAFT IMPACT STATEMENT.*—*The term*
 11 *“Draft Impact Statement” means the draft environ-*
 12 *mental impact statement prepared by the Bureau of*
 13 *Reclamation for the Project dated March 2007.*

14 (12) *FUND.*—*The term “Fund” means the Rec-*
 15 *lamation Waters Settlements Fund established by sec-*
 16 *tion 201(a).*

17 (13) *HYDROLOGIC DETERMINATION.*—*The term*
 18 *“hydrologic determination” means the hydrologic de-*
 19 *termination entitled “Water Availability from Navajo*
 20 *Reservoir and the Upper Colorado River Basin for*
 21 *Use in New Mexico,” prepared by the Bureau of Rec-*
 22 *lamation pursuant to section 11 of the Act of June*
 23 *13, 1962 (Public Law 87–483; 76 Stat. 99), and*
 24 *dated May 23, 2007.*

1 (14) *NATION*.—The term “Nation” means the
 2 *Navajo Nation, a body politic and federally-recog-*
 3 *nized Indian nation as provided for in section 101(2)*
 4 *of the Federally Recognized Indian Tribe List of 1994*
 5 *(25 U.S.C. 497a(2)), also known variously as the*
 6 *“Navajo Tribe,” the “Navajo Tribe of Arizona, New*
 7 *Mexico & Utah,” and the “Navajo Tribe of Indians”*
 8 *and other similar names, and includes all bands of*
 9 *Navajo Indians and chapters of the Navajo Nation.*

10 (15) *NAVAJO-GALLUP WATER SUPPLY PROJECT;*
 11 *PROJECT*.—The term “Navajo-Gallup Water Supply
 12 *Project” or “Project” means the Navajo-Gallup Water*
 13 *Supply Project authorized under section 302(a), as*
 14 *described as the preferred alternative in the Draft Im-*
 15 *pact Statement.*

16 (16) *NAVAJO INDIAN IRRIGATION PROJECT*.—The
 17 term “Navajo Indian Irrigation Project” means the
 18 *Navajo Indian irrigation project authorized by sec-*
 19 *tion 2 of Public Law 87–483 (76 Stat. 96).*

20 (17) *NAVAJO RESERVOIR*.—The term “Navajo
 21 *Reservoir” means the reservoir created by the im-*
 22 *poundment of the San Juan River at Navajo Dam,*
 23 *as authorized by the Act of April 11, 1956 (commonly*
 24 *known as the “Colorado River Storage Project Act”)*
 25 *(43 U.S.C. 620 et seq.).*

1 (18) *NAVAJO NATION MUNICIPAL PIPELINE; PIPE-*
 2 *LINE.—The term “Navajo Nation Municipal Pipe-*
 3 *line” or “Pipeline” means the pipeline used to convey*
 4 *the water of the Animas-La Plata Project of the Nav-*
 5 *ajo Nation from the City of Farmington, New Mexico,*
 6 *to communities of the Navajo Nation located in close*
 7 *proximity to the San Juan River Valley in the State*
 8 *of New Mexico (including the City of Shiprock), as*
 9 *authorized by section 15(b) of the Colorado Ute In-*
 10 *Indian Water Rights Settlement Act of 1988 (Public*
 11 *Law 100–585; 102 Stat. 2973; 114 Stat. 2763A–263).*

12 (19) *NON-NAVAJO IRRIGATION DISTRICTS.—The*
 13 *term “Non-Navajo Irrigation Districts” means—*

14 (A) *the Hammond Conservancy District;*
 15 (B) *the Bloomfield Irrigation District; and*
 16 (C) *any other community ditch organiza-*
 17 *tion in the San Juan River basin in the State*
 18 *of New Mexico.*

19 (20) *PARTIAL FINAL DECREE.—The term “Par-*
 20 *tial Final Decree” means a final and binding judge-*
 21 *ment and decree entered by a court in the stream ad-*
 22 *judication, setting forth the rights of the Nation to use*
 23 *and administer waters of the San Juan River Basin*
 24 *in New Mexico, as set forth in Appendix 1 of the*
 25 *Agreement.*

1 (21) *PROJECT PARTICIPANTS.*—*The term*
 2 *“Project Participants” means the City, the Nation,*
 3 *and the Jicarilla Apache Nation.*

4 (22) *SAN JUAN RIVER BASIN RECOVERY IMPLE-*
 5 *MENTATION PROGRAM.*—*The term “San Juan River*
 6 *Basin Recovery Implementation Program” means the*
 7 *intergovernmental program established pursuant to*
 8 *the cooperative agreement dated October 21, 1992 (in-*
 9 *cluding any amendments to the program).*

10 (23) *SECRETARY.*—*The term “Secretary” means*
 11 *the Secretary of the Interior, acting through the Com-*
 12 *missioner of Reclamation or any other designee.*

13 (24) *STREAM ADJUDICATION.*—*The term “stream*
 14 *adjudication” means the general stream adjudication*
 15 *that is the subject of New Mexico v. United States, et*
 16 *al., No. 75–185 (11th Jud. Dist., San Juan County,*
 17 *New Mexico) (involving claims to waters of the San*
 18 *Juan River and the tributaries of that river).*

19 (25) *SUPPLEMENTAL PARTIAL FINAL DECREE.*—
 20 *The term “Supplemental Partial Final Decree”*
 21 *means a final and binding judgement and decree en-*
 22 *tered by a court in the stream adjudication, setting*
 23 *forth certain water rights of the Nation, as set forth*
 24 *in Appendix 2 of the Agreement.*

1 (26) *TRUST FUND.*—*The term “Trust Fund”*
 2 *means the Navajo Nation Water Resources Develop-*
 3 *ment Trust Fund established by section 402(a).*

4 **SEC. 3. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

5 (a) *EFFECT OF EXECUTION OF AGREEMENT.*—*The*
 6 *execution of the Agreement under section 401(a)(2) shall not*
 7 *constitute a major Federal action under the National Envi-*
 8 *ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

9 (b) *COMPLIANCE WITH ENVIRONMENTAL LAWS.*—*In*
 10 *carrying out this Act, the Secretary shall comply with each*
 11 *law of the Federal Government relating to the protection*
 12 *of the environment, including—*

13 (1) *the National Environmental Policy Act of*
 14 *1969 (42 U.S.C. 4321 et seq.); and*

15 (2) *the Endangered Species Act of 1973 (16*
 16 *U.S.C. 1531 et seq.).*

17 **SEC. 4. NO REALLOCATION OF COSTS.**

18 (a) *EFFECT OF ACT.*—*Notwithstanding any other pro-*
 19 *vision of law, the Secretary shall not reallocate or reassign*
 20 *any costs of projects that have been authorized under the*
 21 *Act of April 11, 1956 (commonly known as the “Colorado*
 22 *River Storage Project Act”)* (43 U.S.C. 620 et seq.), *as of*
 23 *the date of enactment of this Act because of—*

24 (1) *the authorization of the Navajo-Gallup Water*
 25 *Supply Project under this Act; or*

1 (2) *the changes in the uses of the water diverted*
 2 *by the Navajo Indian Irrigation Project or the waters*
 3 *stored in the Navajo Reservoir authorized under this*
 4 *Act.*

5 (b) *USE OF POWER REVENUES.—Notwithstanding*
 6 *any other provision of law, no power revenues under the*
 7 *Act of April 11, 1956 (commonly known as the “Colorado*
 8 *River Storage Project Act”)* (43 U.S.C. 620 *et seq.*), *shall*
 9 *be used to pay or reimburse any costs of the Navajo Indian*
 10 *Irrigation Project or Navajo-Gallup Water Supply Project.*

11 **SEC. 5. INTEREST RATE.**

12 *Notwithstanding any other provision of law, the inter-*
 13 *est rate applicable to any repayment contract entered into*
 14 *under section 304 shall be equal to the discount rate for*
 15 *Federal water resources planning, as determined by the Sec-*
 16 *retary.*

17 **TITLE I—AMENDMENTS TO THE**
 18 **COLORADO RIVER STORAGE**
 19 **PROJECT ACT AND PUBLIC**
 20 **LAW 87–483**

21 **SEC. 101. AMENDMENTS TO THE COLORADO RIVER STOR-**
 22 **AGE PROJECT ACT.**

23 (a) *PARTICIPATING PROJECTS.—Paragraph (2) of the*
 24 *first section of the Act of April 11, 1956 (commonly known*
 25 *as the “Colorado River Storage Project Act”)* (43 U.S.C.

1 620(2)) is amended by inserting “the Navajo-Gallup Water
2 Supply Project,” after “Fruitland Mesa,”.

3 (b) NAVAJO RESERVOIR WATER BANK.—The Act of
4 April 11, 1956 (commonly known as the “Colorado River
5 Storage Project Act”) is amended—

6 (1) by redesignating section 16 (43 U.S.C. 620o)
7 as section 17; and

8 (2) by inserting after section 15 (43 U.S.C.
9 620n) the following:

10 “SEC. 16. (a) The Secretary of the Interior may create
11 and operate within the available capacity of Navajo Res-
12 ervoir a top water bank.

13 “(b) Water made available for the top water bank in
14 accordance with subsections (c) and (d) shall not be subject
15 to section 11 of Public Law 87–483 (76 Stat. 99).

16 “(c) The top water bank authorized under subsection
17 (a) shall be operated in a manner that—

18 “(1) is consistent with applicable law, except
19 that, notwithstanding any other provision of law,
20 water for purposes other than irrigation may be
21 stored in the Navajo Reservoir pursuant to the rules
22 governing the top water bank established under this
23 section; and

1 “(2) does not impair the ability of the Secretary
2 of the Interior to deliver water under contracts en-
3 tered into under—

4 “(A) Public Law 87–483 (76 Stat. 96); and
5 “(B) New Mexico State Engineer File Nos.
6 2847, 2848, 2849, and 2917.

7 “(d)(1) The Secretary of the Interior, in cooperation
8 with the State of New Mexico (acting through the Interstate
9 Stream Commission), shall develop any terms and proce-
10 dures for the storage, accounting, and release of water in
11 the top water bank that are necessary to comply with sub-
12 section (c).

13 “(2) The terms and procedures developed under para-
14 graph (1) shall include provisions requiring that—

15 “(A) the storage of banked water shall be subject
16 to approval under State law by the New Mexico State
17 Engineer to ensure that impairment of any existing
18 water right does not occur, including storage of water
19 under New Mexico State Engineer File No. 2849;

20 “(B) water in the top water bank be subject to
21 evaporation and other losses during storage;

22 “(C) water in the top water bank be released for
23 delivery to the owner or assigns of the banked water
24 on request of the owner, subject to reasonable sched-
25 uling requirements for making the release;

1 “(D) *water in the top water bank be the first*
 2 *water spilled or released for flood control purposes in*
 3 *anticipation of a spill, on the condition that top*
 4 *water bank water shall not be released or included for*
 5 *purposes of calculating whether a release should occur*
 6 *for purposes of satisfying the flow recommendations of*
 7 *the San Juan River Basin Recovery Implementation*
 8 *Program; and*

9 “(E) *water eligible for banking in the top water*
 10 *bank shall be water that otherwise would have been*
 11 *diverted and beneficially used in New Mexico that*
 12 *year.*

13 “(e) *The Secretary of the Interior may charge fees to*
 14 *water users that use the top water bank in amounts suffi-*
 15 *cient to cover the costs incurred by the United States in*
 16 *administering the water bank.”.*

17 **SEC. 102. AMENDMENTS TO PUBLIC LAW 87-483.**

18 (a) *NAVAJO INDIAN IRRIGATION PROJECT.—Public*
 19 *Law 87-483 (76 Stat. 96) is amended by striking section*
 20 *2 and inserting the following:*

21 “SEC. 2. (a) *In accordance with the Act of April 11,*
 22 *1956 (commonly known as the ‘Colorado River Storage*
 23 *Project Act’)* (43 U.S.C. 620 *et seq.*), *the Secretary of the*
 24 *Interior is authorized to construct, operate, and maintain*
 25 *the Navajo Indian Irrigation Project to provide irrigation*

1 *water to a service area of not more than 110,630 acres of*
 2 *land.*

3 “(b)(1) *Subject to paragraph (2), the average annual*
 4 *diversion by the Navajo Indian Irrigation Project from the*
 5 *Navajo Reservoir over any consecutive 10-year period shall*
 6 *be the lesser of—*

7 “(A) *508,000 acre-feet per year; or*

8 “(B) *the quantity of water necessary to supply*
 9 *an average depletion of 270,000 acre-feet per year.*

10 “(2) *The quantity of water diverted for any 1 year*
 11 *shall not exceed the average annual diversion determined*
 12 *under paragraph (1) by more than 15 percent.*

13 “(c) *In addition to being used for irrigation, the water*
 14 *diverted by the Navajo Indian Irrigation Project under sub-*
 15 *section (b) may be used within the area served by Navajo*
 16 *Indian Irrigation Project facilities for the following pur-*
 17 *poses:*

18 “(1) *Aquaculture purposes, including the rearing*
 19 *of fish in support of the San Juan River Basin Re-*
 20 *covery Implementation Program authorized by Public*
 21 *Law 106–392 (114 Stat. 1602).*

22 “(2) *Domestic, industrial, or commercial pur-*
 23 *poses relating to agricultural production and proc-*
 24 *essing.*

1 “(3)(A) *The generation of hydroelectric power as*
 2 *an incident to the diversion of water by the Navajo*
 3 *Indian Irrigation Project for authorized purposes.*

4 “(B) *Notwithstanding any other provision of*
 5 *law—*

6 “(i) *any hydroelectric power generated*
 7 *under this paragraph shall be used or marketed*
 8 *by the Navajo Nation;*

9 “(ii) *the Navajo Nation shall retain any*
 10 *revenues from the sale of the hydroelectric power;*
 11 *and*

12 “(iii) *the United States shall have no trust*
 13 *obligation to monitor, administer, or account for*
 14 *the revenues received by the Navajo Nation, or*
 15 *the expenditure of the revenues.*

16 “(4) *The implementation of the alternate water*
 17 *source provisions described in subparagraph 9.2 of the*
 18 *agreement executed under section 401(a)(2) of the*
 19 *Northwestern New Mexico Rural Water Projects Act.*

20 “(d) *The Navajo Indian Irrigation Project water di-*
 21 *verted under subsection (b) may be transferred to areas lo-*
 22 *cated within or outside the area served by Navajo Indian*
 23 *Irrigation Project facilities, and within or outside the*
 24 *boundaries of the Navajo Nation, for any beneficial use in*
 25 *accordance with—*

1 “(1) the agreement executed under section
2 401(a)(2) of the Northwestern New Mexico Rural
3 Water Projects Act;

4 “(2) the contract executed under section
5 304(a)(2)(B) of that Act; and

6 “(3) any other applicable law.

7 “(e) The Secretary may use the capacity of the Navajo
8 Indian Irrigation Project works to convey water supplies
9 for—

10 “(1) the Navajo-Gallup Water Supply Project
11 under section 302 of the Northwestern New Mexico
12 Rural Water Projects Act; or

13 “(2) other nonirrigation purposes authorized
14 under subsection (c) or (d).

15 “(f)(1) Repayment of the costs of construction of the
16 project (as authorized in subsection (a)) shall be in accord-
17 ance with the Act of April 11, 1956 (commonly known as
18 the ‘Colorado River Storage Project Act’) (43 U.S.C. 620
19 et seq.), including section 4(d) of that Act.

20 “(2) The Secretary shall not reallocate, or require re-
21 payment of, construction costs of the Navajo Indian Irriga-
22 tion Project because of the conveyance of water supplies for
23 nonirrigation purposes under subsection (e).”.

1 (b) *RUNOFF ABOVE NAVAJO DAM.*—Section 11 of Pub-
 2 lic Law 87–483 (76 Stat. 100) is amended by adding at
 3 the end the following:

4 “(d)(1) *For purposes of implementing in a year of pro-*
 5 *spective shortage the water allocation procedures established*
 6 *by subsection (a), the Secretary of the Interior shall deter-*
 7 *mine the quantity of any shortages and the appropriate ap-*
 8 *portionment of water using the normal diversion require-*
 9 *ments on the flow of the San Juan River originating above*
 10 *Navajo Dam based on the following criteria:*

11 “(A) *The quantity of diversion or water delivery*
 12 *for the current year anticipated to be necessary to ir-*
 13 *rigate land in accordance with cropping plans pre-*
 14 *pared by contractors.*

15 “(B) *The annual diversion or water delivery de-*
 16 *mands for the current year anticipated for non-irri-*
 17 *gation uses under water delivery contracts, including*
 18 *contracts authorized by the Northwestern New Mexico*
 19 *Rural Water Projects Act, but excluding any current*
 20 *demand for surface water for placement into aquifer*
 21 *storage for future recovery and use.*

22 “(C) *An annual normal diversion demand of*
 23 *135,000 acre-feet for the initial stage of the San*
 24 *Juan-Chama Project authorized by section 8.*

1 “(2) *The Secretary shall not include in the normal di-*
2 *version requirements—*

3 “(A) *the quantity of water that reliably can be*
4 *anticipated to be diverted or delivered under a con-*
5 *tract from inflows to the San Juan River arising*
6 *below Navajo Dam under New Mexico State Engineer*
7 *File No. 3215; or*

8 “(B) *the quantity of water anticipated to be sup-*
9 *plied through reuse.*

10 “(e)(1) *If the Secretary determines that there is a*
11 *shortage of water under subsection (a), the Secretary shall*
12 *respond to the shortage in the Navajo Reservoir water sup-*
13 *ply by curtailing releases and deliveries in the following*
14 *order:*

15 “(A) *The demand for delivery for uses in the*
16 *State of Arizona under the Navajo-Gallup Water Sup-*
17 *ply Project authorized by section 303 of the North-*
18 *western New Mexico Rural Water Projects Act, ex-*
19 *cluding the quantity of water anticipated to be di-*
20 *verted for the uses from inflows to the San Juan*
21 *River that arise below Navajo Dam in accordance*
22 *with New Mexico State Engineer File No. 3215.*

23 “(B) *The demand for delivery for uses allocated*
24 *under paragraph 8.2 of the agreement executed under*
25 *section 401(a)(2) of the Northwestern New Mexico*

1 *Rural Water Projects Act, excluding the quantity of*
2 *water anticipated to be diverted for such uses under*
3 *State Engineer File No. 3215.*

4 “(C) *The uses in the State of New Mexico that*
5 *are determined under subsection (d), in accordance*
6 *with the procedure for apportioning the water supply*
7 *under subsection (a).*

8 “(2) *For any year for which the Secretary determines*
9 *and responds to a shortage in the Navajo Reservoir water*
10 *supply, the Secretary shall not deliver, and contractors of*
11 *the water supply shall not divert, any of the water supply*
12 *for placement into aquifer storage for future recovery and*
13 *use.*

14 “(3) *To determine the occurrence and amount of any*
15 *shortage to contracts entered into under this section, the*
16 *Secretary shall not include as available storage any water*
17 *stored in a top water bank in Navajo Reservoir established*
18 *under section 16(a) of the Act of April 11, 1956 (commonly*
19 *known as the ‘Colorado River Storage Project Act’).*

20 “(f) *The Secretary of the Interior shall apportion*
21 *water under subsections (a), (d), and (e) on an annual vol-*
22 *ume basis.*

23 “(g) *The Secretary of the Interior may revise a deter-*
24 *mination of shortages, apportionments, or allocations of*
25 *water under subsections (a), (d), and (e) on the basis of*

1 *information relating to water supply conditions that was*
 2 *not available at the time at which the determination was*
 3 *made.*

4 “(h) *Nothing in this section prohibits the distribution*
 5 *of water in accordance with cooperative water agreements*
 6 *between water users providing for a sharing of water sup-*
 7 *plies.*

8 “(i) *Diversions under New Mexico State Engineer File*
 9 *No. 3215 shall be distributed, to the maximum extent water*
 10 *is available, in proportionate amounts to the diversion de-*
 11 *mands of contractors and subcontractors of the Navajo Res-*
 12 *ervoir water supply that are diverting water below Navajo*
 13 *Dam.”.*

14 **SEC. 103. EFFECT ON FEDERAL WATER LAW.**

15 *Unless expressly provided in this Act, nothing in this*
 16 *Act modifies, conflicts with, preempts, or otherwise affects—*

17 (1) *the Boulder Canyon Project Act (43 U.S.C.*
 18 *617 et seq.);*

19 (2) *the Boulder Canyon Project Adjustment Act*
 20 *(54 Stat. 774, chapter 643);*

21 (3) *the Act of April 11, 1956 (commonly known*
 22 *as the “Colorado River Storage Project Act”)* (43
 23 *U.S.C. 620 et seq.);*

1 (4) *the Act of September 30, 1968 (commonly*
 2 *known as the “Colorado River Basin Project Act”)*
 3 *(82 Stat. 885);*

4 (5) *Public Law 87–483 (76 Stat. 96);*

5 (6) *the Treaty between the United States of*
 6 *America and Mexico representing utilization of wa-*
 7 *ters of the Colorado and Tijuana Rivers and of the*
 8 *Rio Grande, signed at Washington February 3, 1944*
 9 *(59 Stat. 1219);*

10 (7) *the Colorado River Compact of 1922, as ap-*
 11 *proved by the Presidential Proclamation of June 25,*
 12 *1929 (46 Stat. 3000);*

13 (8) *the Compact;*

14 (9) *the Act of April 6, 1949 (63 Stat. 31, chapter*
 15 *48);*

16 (10) *the Jicarilla Apache Tribe Water Rights*
 17 *Settlement Act (106 Stat. 2237); or*

18 (11) *section 205 of the Energy and Water Devel-*
 19 *opment Appropriations Act, 2005 (118 Stat. 2949).*

20 ***TITLE II—RECLAMATION WATER***
 21 ***SETTLEMENTS FUND***

22 ***SEC. 201. RECLAMATION WATER SETTLEMENTS FUND.***

23 (a) *ESTABLISHMENT.*—*There is established in the*
 24 *Treasury of the United States a fund, to be known as the*
 25 *“Reclamation Water Settlements Fund”, consisting of—*

1 (1) *such amounts as are deposited to the Fund*
 2 *under subsection (b); and*

3 (2) *any interest earned on investment of*
 4 *amounts in the Fund under subsection (d).*

5 **(b) DEPOSITS TO FUND.—**

6 (1) *IN GENERAL.—For each of fiscal years 2009*
 7 *through 2023, the Secretary of the Treasury shall de-*
 8 *posit in the Fund, if available, \$120,000,000 of the*
 9 *revenues that would otherwise be deposited for the fis-*
 10 *cal year in the fund established by the first section of*
 11 *the Act of June 17, 1902 (32 Stat. 388, chapter*
 12 *1093).*

13 (2) *AVAILABILITY OF AMOUNTS.—Amounts de-*
 14 *posited in the Fund under paragraph (1) shall be*
 15 *made available pursuant to this section—*

16 (A) *without further appropriation; and*

17 (B) *in addition to amounts appropriated*
 18 *pursuant to any authorization contained in any*
 19 *other provision of law.*

20 **(c) EXPENDITURES FROM FUND.—**

21 (1) *IN GENERAL.—*

22 (A) *EXPENDITURES.—Subject to subpara-*
 23 *graph (B), for each of fiscal years 2009 through*
 24 *2028, the Secretary may expend from the Fund*
 25 *an amount not to exceed \$120,000,000, plus the*

1 *interest accrued in the Fund, for the fiscal year*
 2 *in which expenditures are made pursuant to*
 3 *paragraphs (2) and (3).*

4 *(B) ADDITIONAL EXPENDITURES.—The Sec-*
 5 *retary may expend more than \$120,000,000 for*
 6 *any fiscal year if such amounts are available in*
 7 *the Fund due to expenditures not reaching*
 8 *\$120,000,000 for prior fiscal years.*

9 *(2) AUTHORITY.—The Secretary may expend*
 10 *money from the Fund to implement a settlement*
 11 *agreement approved by Congress that resolves, in*
 12 *whole or in part, litigation involving the United*
 13 *States, if the settlement agreement or implementing*
 14 *legislation requires the Bureau of Reclamation to pro-*
 15 *vide financial assistance for, or plan, design, and*
 16 *construct—*

17 *(A) water supply infrastructure; or*

18 *(B) a project—*

19 *(i) to rehabilitate a water delivery sys-*
 20 *tem to conserve water; or*

21 *(ii) to restore fish and wildlife habitat*
 22 *or otherwise improve environmental condi-*
 23 *tions associated with or affected by, or lo-*
 24 *cated within the same river basin as, a Fed-*

1 *eral reclamation project that is in existence*
 2 *on the date of enactment of this Act.*

3 (3) *USE FOR COMPLETION OF PROJECT AND*
 4 *OTHER SETTLEMENTS.—*

5 (A) *PRIORITIES.—*

6 (i) *FIRST PRIORITY.—*

7 (I) *IN GENERAL.—The first pri-*
 8 *ority for expenditure of amounts in the*
 9 *Fund during the entire period in*
 10 *which the Fund is in existence shall be*
 11 *for the purposes described in, and in*
 12 *the order of, clauses (i) through (iv) of*
 13 *subparagraph (B).*

14 (II) *RESERVED AMOUNTS.—The*
 15 *Secretary shall reserve amounts depos-*
 16 *ited into the Fund in accordance with*
 17 *subclause (I).*

18 (ii) *OTHER PURPOSES.—Any amounts*
 19 *in the Fund that are not needed for the pur-*
 20 *poses described in subparagraph (B) may be*
 21 *used for other purposes authorized in para-*
 22 *graph (2).*

23 (B) *COMPLETION OF PROJECT.—*

24 (i) *NAVAJO-GALLUP WATER SUPPLY*
 25 *PROJECT.—*

1 (I) *IN GENERAL.*—*Subject to sub-*
2 *clause (II), effective beginning January*
3 *1, 2009, if, in the judgment of the Sec-*
4 *retary on an annual basis the deadline*
5 *described in section 401(f)(1)(A)(ix) is*
6 *unlikely to be met because a sufficient*
7 *amount of funding is not otherwise*
8 *available through appropriations made*
9 *available pursuant to section 309(a),*
10 *the Secretary shall expend from the*
11 *Fund such amounts on an annual*
12 *basis consistent with paragraphs (1)*
13 *and (2), as are necessary to pay the*
14 *Federal share of the costs, and substan-*
15 *tially complete as expeditiously as*
16 *practicable, the construction of the*
17 *water supply infrastructure authorized*
18 *as part of the Project.*

19 (II) *MAXIMUM AMOUNT.*—

20 (aa) *IN GENERAL.*—*Except*
21 *as provided under item (bb), the*
22 *amount expended under subclause*
23 *(I) shall not exceed \$500,000,000*
24 *for the period of fiscal years 2009*
25 *through 2018.*

1 (bb) *EXCEPTION.*—*The limi-*
 2 *tation on the expenditure amount*
 3 *under item (aa) may be exceeded*
 4 *during the entire period in which*
 5 *the Fund is in existence.*

6 (ii) *OTHER NEW MEXICO SETTLE-*
 7 *MENTS.*—

8 (I) *IN GENERAL.*—*Subject to sub-*
 9 *clause (II), effective beginning January*
 10 *1, 2009, in addition to the funding*
 11 *made available under clause (i), if in*
 12 *the judgment of the Secretary on an*
 13 *annual basis a sufficient amount of*
 14 *funding is not otherwise available*
 15 *through annual appropriations, the*
 16 *Secretary shall expend from the Fund*
 17 *such amounts on an annual basis con-*
 18 *sistent with paragraphs (1) and (2), as*
 19 *are necessary to pay the Federal share*
 20 *of the costs of implementing the Indian*
 21 *water rights settlement agreements en-*
 22 *tered into by the State of New Mexico*
 23 *in the Aamodt adjudication and the*
 24 *Abeyta adjudication, if such settle-*

ments are subsequently approved and authorized by an Act of Congress.

(II) *MAXIMUM AMOUNT.*—The amount expended under subclause (I) shall not exceed \$250,000,000.

(iii) *MONTANA SETTLEMENTS.*—

(I) *IN GENERAL.*—Subject to subclause (II), effective beginning January 1, 2009, in addition to funding made available pursuant to clauses (i) and (ii), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the costs of implementing Indian water rights settlement agreements entered into by the State of Montana with the Blackfeet Tribe, the Crow Tribe, or the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation in the judicial pro-

1 *ceeding entitled “In re the General Ad-*
 2 *judication of All the Rights to Use*
 3 *Surface and Groundwater in the State*
 4 *of Montana”, if a settlement or settle-*
 5 *ments are subsequently approved and*
 6 *authorized by an Act of Congress.*

7 (II) *MAXIMUM AMOUNT.—*

8 (aa) *IN GENERAL.—Except*
 9 *as provided under item (bb), the*
 10 *amount expended under subclause*
 11 *(I) shall not exceed \$350,000,000*
 12 *for the period of fiscal years 2009*
 13 *through 2018.*

14 (bb) *EXCEPTION.—The limi-*
 15 *tation on the expenditure amount*
 16 *under item (aa) may be exceeded*
 17 *during the entire period in which*
 18 *the Fund is in existence.*

19 (cc) *OTHER FUNDING.—The*
 20 *Secretary shall ensure that any*
 21 *such funding shall be provided in*
 22 *a manner that does not limit the*
 23 *funding available pursuant to*
 24 *clauses (i) and (ii).*

25 (iv) *ARIZONA SETTLEMENT.—*

1 (I) *IN GENERAL.*—Subject to sub-
2 clause (II), effective beginning January
3 1, 2009, in addition to funding made
4 available pursuant to clauses (i), (ii),
5 and (iii), if in the judgment of the Sec-
6 retary on an annual basis a sufficient
7 amount of funding is not otherwise
8 available through annual appropria-
9 tions, the Secretary shall expend from
10 the Fund such amounts on an annual
11 basis consistent with paragraphs (1)
12 and (2), as are necessary to pay the
13 Federal share of the costs of imple-
14 menting an Indian water rights settle-
15 ment agreement entered into by the
16 State of Arizona with the Navajo Na-
17 tion to resolve the water rights claims
18 of the Nation in the Lower Colorado
19 River basin in Arizona, if a settlement
20 is subsequently approved and author-
21 ized by an Act of Congress.

22 (II) *MAXIMUM AMOUNT.*—

23 (aa) *IN GENERAL.*—Except
24 as provided under item (bb), the
25 amount expended under subclause

1 (I) shall not exceed \$100,000,000
2 for the period of fiscal years 2009
3 through 2018.

4 (bb) EXCEPTION.—The limi-
5 tation on the expenditure amount
6 under item (aa) may be exceeded
7 during the entire period in which
8 the Fund is in existence.

9 (cc) OTHER FUNDING.—The
10 Secretary shall ensure that any
11 such funding shall be provided in
12 a manner that does not limit the
13 funding available pursuant to
14 clauses (i) and (ii).

15 (C) REVERSION.—If the settlements de-
16 scribed in clauses (ii) through (iv) of subpara-
17 graph (B) have not been approved and author-
18 ized by an Act of Congress by December 31,
19 2014, the amounts reserved for the settlements
20 shall no longer be reserved by the Secretary pur-
21 suant to subparagraph (A)(i) and shall revert to
22 the Fund for any authorized use, as determined
23 by the Secretary.

24 (d) INVESTMENT OF AMOUNTS.—

1 (1) *IN GENERAL.*—*The Secretary shall invest*
 2 *such portion of the Fund as is not, in the judgment*
 3 *of the Secretary, required to meet current with-*
 4 *drawals.*

5 (2) *CREDITS TO FUND.*—*The interest on, and the*
 6 *proceeds from the sale or redemption of, any obliga-*
 7 *tions held in the Fund shall be credited to, and form*
 8 *a part of, the Fund.*

9 (e) *TRANSFERS OF AMOUNTS.*—

10 (1) *IN GENERAL.*—*The amounts required to be*
 11 *transferred to the Fund under this section shall be*
 12 *transferred at least monthly from the general fund of*
 13 *the Treasury to the Fund on the basis of estimates*
 14 *made by the Secretary of the Treasury.*

15 (2) *ADJUSTMENTS.*—*Proper adjustment shall be*
 16 *made in amounts subsequently transferred to the ex-*
 17 *tent prior estimates were in excess of or less than the*
 18 *amounts required to be transferred.*

19 (f) *TERMINATION.*—*On September 30, 2028—*

20 (1) *the Fund shall terminate; and*

21 (2) *the unexpended and unobligated balance of*
 22 *the Fund shall be transferred to the appropriate fund*
 23 *of the Treasury.*

***TITLE III—NAVAJO-GALLUP
WATER SUPPLY PROJECT***

SEC. 301. PURPOSES.

The purposes of this subtitle are—

(1) to authorize the Secretary to construct, operate, and maintain the Navajo-Gallup Water Supply Project;

(2) to allocate the capacity of the Project among the Nation, the City, and the Jicarilla Apache Nation; and

(3) to authorize the Secretary to enter into Project repayment contracts with the City and the Jicarilla Apache Nation.

SEC. 302. AUTHORIZATION OF NAVAJO-GALLUP WATER SUPPLY PROJECT.

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, is authorized to design, construct, operate, and maintain the Project in substantial accordance with the preferred alternative in the Draft Impact Statement.

(b) PROJECT FACILITIES.—To provide for the delivery of San Juan River water to Project Participants, the Secretary may construct, operate, and maintain the Project facilities described in the preferred alternative in the Draft Impact Statement, including:

1 (1) *A pumping plant on the San Juan River in*
2 *the vicinity of Kirtland, New Mexico.*

3 (2)(A) *A main pipeline from the San Juan*
4 *River near Kirtland, New Mexico, to Shiprock, New*
5 *Mexico, and Gallup, New Mexico, which follows*
6 *United States Highway 491.*

7 (B) *Any pumping plants associated with*
8 *the pipeline authorized under subparagraph (A).*

9 (3)(A) *A main pipeline from Cutter Reservoir to*
10 *Ojo Encino, New Mexico, which follows United States*
11 *Highway 550.*

12 (B) *Any pumping plants associated with*
13 *the pipeline authorized under subparagraph (A).*

14 (4)(A) *Lateral pipelines from the main pipelines*
15 *to Nation communities in the States of New Mexico*
16 *and Arizona.*

17 (B) *Any pumping plants associated with*
18 *the pipelines authorized under subparagraph*
19 *(A).*

20 (5) *Any water regulation, storage or treatment*
21 *facility, service connection to an existing public water*
22 *supply system, power substation, power distribution*
23 *works, or other appurtenant works (including a*
24 *building or access road) that is related to the Project*
25 *facilities authorized by paragraphs (1) through (4),*

1 *including power transmission facilities and associated*
 2 *wheeling services to connect Project facilities to exist-*
 3 *ing high-voltage transmission facilities and deliver*
 4 *power to the Project.*

5 *(c) ACQUISITION OF LAND.—*

6 *(1) IN GENERAL.—The Secretary is authorized to*
 7 *acquire any land or interest in land that is necessary*
 8 *to construct, operate, and maintain the Project facili-*
 9 *ties authorized under subsection (b).*

10 *(2) LAND OF THE PROJECT PARTICIPANTS.—As a*
 11 *condition of construction of the facilities authorized*
 12 *under this title, the Project Participants shall provide*
 13 *all land or interest in land, as appropriate, that the*
 14 *Secretary identifies as necessary for acquisition under*
 15 *this subsection at no cost to the Secretary.*

16 *(3) LIMITATION.—The Secretary may not con-*
 17 *demn water rights for purposes of the Project.*

18 *(d) CONDITIONS.—*

19 *(1) IN GENERAL.—Except as provided in para-*
 20 *graph (2), the Secretary shall not commence construc-*
 21 *tion of the facilities authorized under subsection (b)*
 22 *until such time as—*

23 *(A) the Secretary executes the Agreement*
 24 *and the Contract;*

1 (B) the contracts authorized under section
2 304 are executed;

3 (C) the Secretary—

4 (i) completes an environmental impact
5 statement for the Project; and

6 (ii) has issued a record of decision that
7 provides for a preferred alternative; and

8 (D) the Secretary has entered into an agree-
9 ment with the State of New Mexico under which
10 the State of New Mexico will provide a share of
11 the construction costs of the Project of not less
12 than \$50,000,000, except that the State of New
13 Mexico shall receive credit for funds the State
14 has contributed to construct water conveyance fa-
15 cilities to the Project Participants to the extent
16 that the facilities reduce the cost of the Project as
17 estimated in the Draft Impact Statement.

18 (2) *EXCEPTION.*—If the Jicarilla Apache Nation
19 elects not to enter into a contract pursuant to section
20 304, the Secretary, after consulting with the Nation,
21 the City, and the State of New Mexico acting through
22 the Interstate Stream Commission, may make appro-
23 priate modifications to the scope of the Project and
24 proceed with Project construction if all other condi-
25 tions for construction have been satisfied.

1 (3) *EFFECT OF INDIAN SELF-DETERMINATION*
 2 *AND EDUCATION ASSISTANCE ACT.—The Indian Self-*
 3 *Determination and Education Assistance Act (25*
 4 *U.S.C. 450 et seq.) shall not apply to the design, con-*
 5 *struction, operation, maintenance, or replacement of*
 6 *the Project.*

7 (e) *POWER.—The Secretary shall reserve, from existing*
 8 *reservations of Colorado River Storage Project power for*
 9 *Bureau of Reclamation projects, up to 26 megawatts of*
 10 *power for use by the Project.*

11 (f) *CONVEYANCE OF TITLE TO PROJECT FACILITIES.—*

12 (1) *IN GENERAL.—The Secretary is authorized to*
 13 *enter into separate agreements with the City and the*
 14 *Nation and, on entering into the agreements, shall*
 15 *convey title to each Project facility or section of a*
 16 *Project facility authorized under subsection (b) (in-*
 17 *cluding any appropriate interests in land) to the City*
 18 *and the Nation after—*

19 (A) *completion of construction of a Project*
 20 *facility or a section of a Project facility that is*
 21 *operating and delivering water; and*

22 (B) *execution of a Project operations agree-*
 23 *ment approved by the Secretary and the Project*
 24 *Participants that sets forth—*

1 *(i) any terms and conditions that the*
2 *Secretary determines are necessary—*

3 *(I) to ensure the continuation of*
4 *the intended benefits of the Project; and*
5 *(II) to fulfill the purposes of this*
6 *subtitle;*

7 *(ii) requirements acceptable to the Sec-*
8 *retary and the Project Participants for—*

9 *(I) the distribution of water under*
10 *the Project or section of a Project facil-*
11 *ity; and*

12 *(II) the allocation and payment of*
13 *annual operation, maintenance, and*
14 *replacement costs of the Project or sec-*
15 *tion of a Project facility based on the*
16 *proportionate uses of Project facilities;*
17 *and*

18 *(iii) conditions and requirements ac-*
19 *ceptable to the Secretary and the Project*
20 *Participants for operating and maintaining*
21 *each Project facility on completion of the*
22 *conveyance of title, including the require-*
23 *ment that the City and the Nation shall—*

24 *(I) comply with—*

25 *(aa) the Compact; and*

1 (bb) other applicable law;
2 and

3 (II) be responsible for—

4 (aa) the operation, mainte-
5 nance, and replacement of each
6 Project facility; and

7 (bb) the accounting and
8 management of water conveyance
9 and Project finances, as necessary
10 to administer and fulfill the con-
11 ditions of the Contract executed
12 under section 304(a)(2)(B).

13 (2) *EFFECT OF CONVEYANCE.*—The conveyance
14 of title to each Project facility shall not affect the ap-
15 plication of the Endangered Species Act of 1973 (16
16 U.S.C. 1531 et seq.) relating to the use of the water
17 associated with the Project.

18 (3) *LIABILITY.*—

19 (A) *IN GENERAL.*—Effective on the date of
20 the conveyance authorized by this subsection, the
21 United States shall not be held liable by any
22 court for damages of any kind arising out of any
23 act, omission, or occurrence relating to the land,
24 buildings, or facilities conveyed under this sub-
25 section, other than damages caused by acts of

1 *negligence committed by the United States, or by*
 2 *employees or agents of the United States, prior*
 3 *to the date of conveyance.*

4 *(B) TORT CLAIMS.—Nothing in this section*
 5 *increases the liability of the United States be-*
 6 *yond the liability provided in chapter 171 of*
 7 *title 28, United States Code (commonly known*
 8 *as the “Federal Tort Claims Act”).*

9 *(4) NOTICE OF PROPOSED CONVEYANCE.—Not*
 10 *later than 45 days before the date of a proposed con-*
 11 *veyance of title to any Project facility, the Secretary*
 12 *shall submit to the Committee on Resources of the*
 13 *House of Representatives and to the Committee on*
 14 *Energy and Natural Resources of the Senate notice of*
 15 *the conveyance of each Project facility.*

16 *(g) COLORADO RIVER STORAGE PROJECT POWER.—*
 17 *The conveyance of Project facilities under subsection (f)*
 18 *shall not affect the availability of Colorado River Storage*
 19 *Project power to the Project under subsection (e).*

20 *(h) REGIONAL USE OF PROJECT FACILITIES.—*

21 *(1) IN GENERAL.—Subject to paragraph (2),*
 22 *Project facilities constructed under subsection (b) may*
 23 *be used to treat and convey non-Project water or*
 24 *water that is not allocated by subsection 303(b) if—*

1 (A) capacity is available without impairing
2 any water delivery to a Project Participant; and

3 (B) the unallocated or non-Project water
4 beneficiary—

5 (i) has the right to use the water;

6 (ii) agrees to pay the operation, main-
7 tenance, and replacement costs assignable to
8 the beneficiary for the use of the Project fa-
9 cilities; and

10 (iii) agrees to pay an appropriate fee
11 that may be established by the Secretary to
12 assist in the recovery of any capital cost al-
13 locable to that use.

14 (2) *EFFECT OF PAYMENTS.*—Any payments to
15 the United States or the Nation for the use of unused
16 capacity under this subsection or for water under any
17 subcontract with the Nation or the Jicarilla Apache
18 Nation shall not alter the construction repayment re-
19 quirements or the operation, maintenance, and re-
20 placement payment requirements of the Project Par-
21 ticipants.

22 **SEC. 303. DELIVERY AND USE OF NAVAJO-GALLUP WATER**
23 **SUPPLY PROJECT WATER.**

24 (a) *USE OF PROJECT WATER.*—

1 (1) *IN GENERAL.*—*In accordance with this Act*
 2 *and other applicable law, water supply from the*
 3 *Project shall be used for municipal, industrial, com-*
 4 *mercial, domestic, and stock watering purposes.*

5 (2) *USE ON CERTAIN LAND.*—

6 (A) *IN GENERAL.*—*Subject to subparagraph*
 7 *(B), the Nation may use Project water alloca-*
 8 *tions on—*

9 (i) *land held by the United States in*
 10 *trust for the Nation and members of the Na-*
 11 *tion; and*

12 (ii) *land held in fee by the Nation.*

13 (B) *TRANSFER.*—*The Nation may transfer*
 14 *the purposes and places of use of the allocated*
 15 *water in accordance with the Agreement and ap-*
 16 *plicable law.*

17 (3) *HYDROELECTRIC POWER.*—

18 (A) *IN GENERAL.*—*Hydroelectric power*
 19 *may be generated as an incident to the delivery*
 20 *of Project water for authorized purposes under*
 21 *paragraph (1).*

22 (B) *ADMINISTRATION.*—*Notwithstanding*
 23 *any other provision of law—*

1 (i) any hydroelectric power generated
2 under this paragraph shall be used or mar-
3 keted by the Nation;

4 (ii) the Nation shall retain any reve-
5 nues from the sale of the hydroelectric
6 power; and

7 (iii) the United States shall have no
8 trust obligation or other obligation to mon-
9 itor, administer, or account for the revenues
10 received by the Nation, or the expenditure of
11 the revenues.

12 (4) STORAGE.—

13 (A) IN GENERAL.—Subject to subparagraph
14 (B), any water contracted for delivery under
15 paragraph (1) that is not needed for current
16 water demands or uses may be delivered by the
17 Project for placement in underground storage in
18 the State of New Mexico for future recovery and
19 use.

20 (B) STATE APPROVAL.—Delivery of water
21 under subparagraph (A) is subject to—

22 (i) approval by the State of New Mex-
23 ico under applicable provisions of State law
24 relating to aquifer storage and recovery;
25 and

1 (ii) the provisions of the Agreement
2 and this Act.

3 (b) *PROJECT WATER AND CAPACITY ALLOCATIONS.*—

4 (1) *DIVERSION.*—Subject to availability and
5 consistent with Federal and State law, the Project
6 may divert from the Navajo Reservoir and the San
7 Juan River a quantity of water to be allocated and
8 used consistent with the Agreement and this Act, that
9 does not exceed in any 1 year, the lesser of—

10 (A) 37,760 acre-feet of water; or

11 (B) the quantity of water necessary to sup-
12 ply a depletion from the San Juan River of
13 35,890 acre-feet.

14 (2) *PROJECT DELIVERY CAPACITY ALLOCA-*
15 *TIONS.*—

16 (A) *IN GENERAL.*—The capacity of the
17 Project shall be allocated to the Project Partici-
18 pants in accordance with subparagraphs (B)
19 through (E), other provisions of this Act, and
20 other applicable law.

21 (B) *DELIVERY CAPACITY ALLOCATION TO*
22 *THE CITY.*—The Project may deliver at the point
23 of diversion from the San Juan River not more
24 than 7,500 acre-feet of water in any 1 year for

1 *which the City has secured rights for the use of*
 2 *the City.*

3 (C) *DELIVERY CAPACITY ALLOCATION TO*
 4 *NAVAJO NATION COMMUNITIES IN NEW MEXICO.—*
 5 *For use by the Nation in the State of New Mex-*
 6 *ico, the Project may deliver water out of the*
 7 *water rights held by the Secretary for the Nation*
 8 *and confirmed under this Act, at the points of*
 9 *diversion from the San Juan River or at Navajo*
 10 *Reservoir in any 1 year, the lesser of—*

11 (i) *22,650 acre-feet of water; or*

12 (ii) *the quantity of water necessary to*
 13 *supply a depletion from the San Juan*
 14 *River of 20,780 acre-feet of water.*

15 (D) *DELIVERY CAPACITY ALLOCATION TO*
 16 *NAVAJO NATION COMMUNITIES IN ARIZONA.—*
 17 *Subject to subsection (c), the Project may deliver*
 18 *at the point of diversion from the San Juan*
 19 *River not more than 6,411 acre-feet of water in*
 20 *any 1 year for use by the Nation in the State*
 21 *of Arizona.*

22 (E) *DELIVERY CAPACITY ALLOCATION TO*
 23 *JICARILLA APACHE NATION.—The Project may*
 24 *deliver at Navajo Reservoir not more than 1,200*
 25 *acre-feet of water in any 1 year of the water*

1 *rights of the Jicarilla Apache Nation, held by the*
 2 *Secretary and confirmed by the Jicarilla Apache*
 3 *Tribe Water Rights Settlement Act (Public Law*
 4 *102–441; 106 Stat. 2237), for use by the*
 5 *Jicarilla Apache Nation in the southern portion*
 6 *of the Jicarilla Apache Nation Reservation in*
 7 *the State of New Mexico.*

8 *(3) USE IN EXCESS OF DELIVERY CAPACITY AL-*
 9 *LOCATION QUANTITY.—Notwithstanding each delivery*
 10 *capacity allocation quantity limit described in sub-*
 11 *paragraphs (B), (C), and (E) of paragraph (2), the*
 12 *Secretary may authorize a Project Participant to ex-*
 13 *ceed the delivery capacity allocation quantity limit of*
 14 *that Project Participant if—*

15 *(A) delivery capacity is available without*
 16 *impairing any water delivery to any other*
 17 *Project Participant; and*

18 *(B) the Project Participant benefitting from*
 19 *the increased allocation of delivery capacity—*

20 *(i) has the right under applicable law*
 21 *to use the additional water;*

22 *(ii) agrees to pay the operation, main-*
 23 *tenance, and replacement costs relating to*
 24 *the additional use of any Project facility;*
 25 *and*

1 (iii) agrees, if the Project title is held
 2 by the Secretary, to pay a fee established by
 3 the Secretary to assist in recovering capital
 4 costs relating to that additional use.

5 (c) CONDITIONS FOR USE IN ARIZONA.—

6 (1) REQUIREMENTS.—Project water shall not be
 7 delivered for use by any community of the Nation lo-
 8 cated in the State of Arizona under subsection
 9 (b)(2)(D) until—

10 (A) the Nation and the State of Arizona
 11 have entered into a water rights settlement agree-
 12 ment approved by an Act of Congress that speci-
 13 fies the allocation of Colorado River System
 14 water to which the use in Arizona will be
 15 charged; and

16 (B) the Secretary has determined by hydro-
 17 logic investigation that sufficient water is rea-
 18 sonably likely to be available to supply the use
 19 in the State of Arizona from water of the Colo-
 20 rado River system allocated to the State.

21 (2) ACCOUNTING OF USES IN ARIZONA.—Pursu-
 22 ant to paragraph (1), any depletion of water from the
 23 San Juan River stream system in the State of New
 24 Mexico that results from the diversion of water by the
 25 Project for uses within the State of Arizona (includ-

1 *ing depletion incidental to the diversion, impounding,*
 2 *or conveyance of water in the State of New Mexico for*
 3 *uses in the State of Arizona)—*

4 *(A) shall be accounted for as a part of the*
 5 *Colorado River System apportionments to the*
 6 *State of Arizona; and*

7 *(B) shall not increase the total quantity of*
 8 *water to which the State of Arizona is entitled*
 9 *to use under any compact, statute, or court de-*
 10 *cree.*

11 *(d) FORBEARANCE.—*

12 *(1) IN GENERAL.—Subject to paragraphs (2) and*
 13 *(3), during any year in which a shortage to the nor-*
 14 *mal diversion requirement for any use relating to the*
 15 *Project within the State of Arizona occurs (as deter-*
 16 *mined under section 11 of Public Law 87–483 (76*
 17 *Stat. 99)), the Nation may temporarily forbear the*
 18 *delivery of the water supply of the Navajo Reservoir*
 19 *for uses in the State of New Mexico under the appor-*
 20 *tionments of water to the Navajo Indian Irrigation*
 21 *Project and the normal diversion requirements of the*
 22 *Project to allow an equivalent quantity of water to be*
 23 *delivered from the Navajo Reservoir water supply for*
 24 *municipal and domestic uses of the Nation in the*
 25 *State of Arizona under the Project.*

1 (2) *LIMITATION OF FORBEARANCE.*—*The Nation*
 2 *may forebear the delivery of water under paragraph*
 3 *(1) of a quantity not exceeding the quantity of the*
 4 *shortage to the normal diversion requirement for any*
 5 *use relating to the Project within the State of Ari-*
 6 *zona.*

7 (3) *EFFECT.*—*The forbearance of the delivery of*
 8 *water under paragraph (1) shall be subject to the re-*
 9 *quirements in subsection (c).*

10 (e) *EFFECT.*—*Nothing in this Act—*

11 *(1) authorizes the marketing, leasing, or transfer*
 12 *of the water supplies made available to the Nation*
 13 *under the Contract to non-Navajo water users in*
 14 *States other than the State of New Mexico; or*

15 *(2) authorizes the forbearance of water uses in*
 16 *the State of New Mexico to allow uses of water in*
 17 *other States other than as authorized under subsection*
 18 *(d).*

19 (f) *COLORADO RIVER COMPACTS.*—*Notwithstanding*
 20 *any other provision of law—*

21 *(1) water may be diverted by the Project from*
 22 *the San Juan River in the State of New Mexico for*
 23 *use within New Mexico in the lower basin, as that*
 24 *term is used in the Colorado River Compact;*

1 (2) *any water diverted under paragraph (1)*
 2 *shall be a part of, and charged against, the consump-*
 3 *tive use apportionment made to the State of New*
 4 *Mexico by Article III(a) of the Compact and to the*
 5 *upper basin by Article III(a) of the Colorado River*
 6 *Compact; and*

7 (3) *any water so diverted by the Project into the*
 8 *lower basin within the State of New Mexico shall not*
 9 *be credited as water reaching Lee Ferry pursuant to*
 10 *Articles III(c) and III(d) of the Colorado River Com-*
 11 *pact.*

12 (g) *PAYMENT OF OPERATION, MAINTENANCE, AND RE-*
 13 *PLACEMENT COSTS.—*

14 (1) *IN GENERAL.—The Secretary is authorized to*
 15 *pay the operation, maintenance, and replacement*
 16 *costs of the Project allocable to the Project Partici-*
 17 *pants under section 304 until the date on which the*
 18 *Secretary declares any section of the Project to be sub-*
 19 *stantially complete and delivery of water generated*
 20 *by, and through, that section of the Project can be*
 21 *made to a Project participant.*

22 (2) *PROJECT PARTICIPANT PAYMENTS.—Begin-*
 23 *ning on the date described in paragraph (1), each*
 24 *Project Participant shall pay all allocated operation,*
 25 *maintenance, and replacement costs for that substan-*

1 *tially completed section of the Project, in accordance*
 2 *with contracts entered into pursuant to section 304,*
 3 *except as provided in section 304(f).*

4 **SEC. 304. PROJECT CONTRACTS.**

5 *(a) NAVAJO NATION CONTRACT.—*

6 *(1) HYDROLOGIC DETERMINATION.—Congress*
 7 *recognizes that the Hydrologic Determination nec-*
 8 *essary to support approval of the Contract has been*
 9 *completed.*

10 *(2) CONTRACT APPROVAL.—*

11 *(A) APPROVAL.—*

12 *(i) IN GENERAL.—Except to the extent*
 13 *that any provision of the Contract conflicts*
 14 *with this Act, Congress approves, ratifies,*
 15 *and confirms the Contract.*

16 *(ii) AMENDMENTS.—To the extent any*
 17 *amendment is executed to make the Con-*
 18 *tract consistent with this Act, that amend-*
 19 *ment is authorized, ratified, and confirmed.*

20 *(B) EXECUTION OF CONTRACT.—The Sec-*
 21 *retary, acting on behalf of the United States,*
 22 *shall enter into the Contract to the extent that*
 23 *the Contract does not conflict with this Act (in-*
 24 *cluding any amendment that is required to make*
 25 *the Contract consistent with this Act).*

1 (3) NONREIMBURSABILITY OF ALLOCATED
2 COSTS.—*The following costs shall be nonreimbursable*
3 *and not subject to repayment by the Nation or any*
4 *other Project beneficiary:*

5 (A) *Any share of the construction costs of*
6 *the Nation relating to the Project authorized by*
7 *section 302(a).*

8 (B) *Any costs relating to the construction of*
9 *the Navajo Indian Irrigation Project that may*
10 *otherwise be allocable to the Nation for use of*
11 *any facility of the Navajo Indian Irrigation*
12 *Project to convey water to each Navajo commu-*
13 *nity under the Project.*

14 (C) *Any costs relating to the construction of*
15 *Navajo Dam that may otherwise be allocable to*
16 *the Nation for water deliveries under the Con-*
17 *tract.*

18 (4) OPERATION, MAINTENANCE, AND REPLACE-
19 MENT OBLIGATION.—*Subject to subsection (f), the*
20 *Contract shall include provisions under which the Na-*
21 *tion shall pay any costs relating to the operation,*
22 *maintenance, and replacement of each facility of the*
23 *Project that are allocable to the Nation.*

24 (5) LIMITATION, CANCELLATION, TERMINATION,
25 AND RESCISSION.—*The Contract may be limited by a*

1 *term of years, canceled, terminated, or rescinded only*
 2 *by an Act of Congress.*

3 *(b) CITY OF GALLUP CONTRACT.—*

4 *(1) CONTRACT AUTHORIZATION.—Consistent*
 5 *with this Act, the Secretary is authorized to enter into*
 6 *a repayment contract with the City that requires the*
 7 *City—*

8 *(A) to repay, within a 50-year period, the*
 9 *share of the construction costs of the City relat-*
 10 *ing to the Project, with interest as provided*
 11 *under section 5; and*

12 *(B) consistent with section 303(g), to pay*
 13 *the operation, maintenance, and replacement*
 14 *costs of the Project that are allocable to the City.*

15 *(2) CONTRACT PREPAYMENT.—*

16 *(A) IN GENERAL.—The contract authorized*
 17 *under paragraph (1) may allow the City to sat-*
 18 *isfy the repayment obligation of the City for con-*
 19 *struction costs of the Project on the payment of*
 20 *the share of the City prior to the initiation of*
 21 *construction.*

22 *(B) AMOUNT.—The amount of the share of*
 23 *the City described in subparagraph (A) shall be*
 24 *determined by agreement between the Secretary*
 25 *and the City.*

1 (C) *REPAYMENT OBLIGATION.*—Any repay-
 2 ment obligation established by the Secretary and
 3 the City pursuant to subparagraph (A) shall be
 4 subject to a final cost allocation by the Secretary
 5 on project completion and to the limitations set
 6 forth in paragraph (3).

7 (3) *SHARE OF CONSTRUCTION COSTS.*—

8 (A) *IN GENERAL.*—Subject to subparagraph
 9 (B), the Secretary shall determine the share of
 10 the construction costs of the Project allocable to
 11 the City and establish the percentage of the allo-
 12 cated construction costs that the City shall be re-
 13 quired to repay pursuant to the contract entered
 14 into under paragraph (1), based on the ability of
 15 the City to pay.

16 (B) *MINIMUM PERCENTAGE.*—Notwith-
 17 standing subparagraph (A), the repayment obli-
 18 gation of the City shall be at least 25 percent of
 19 the construction costs of the Project that are allo-
 20 cable to the City, but shall in no event exceed 35
 21 percent.

22 (4) *EXCESS CONSTRUCTION COSTS.*—Any con-
 23 struction costs of the Project allocable to the City in
 24 excess of the repayment obligation of the City, as de-

1 *terminated under paragraph (3), shall be nonreimburs-*
 2 *able.*

3 (5) *GRANT FUNDS.—A grant from any other*
 4 *Federal source shall not be credited toward the*
 5 *amount required to be repaid by the City under a re-*
 6 *payment contract.*

7 (6) *TITLE TRANSFER.—If title is transferred to*
 8 *the City prior to repayment under section 302(f), the*
 9 *City shall be required to provide assurances satisfac-*
 10 *tory to the Secretary of fulfillment of the remaining*
 11 *repayment obligation of the City.*

12 (7) *WATER DELIVERY SUBCONTRACT.—The Sec-*
 13 *retary shall not enter into a contract under para-*
 14 *graph (1) with the City until the City has secured a*
 15 *water supply for the City's portion of the Project de-*
 16 *scribed in section 303(b)(2)(B), by entering into, as*
 17 *approved by the Secretary, a water delivery sub-*
 18 *contract for a period of not less than 40 years begin-*
 19 *ning on the date on which the construction of any fa-*
 20 *cility of the Project serving the City is completed,*
 21 *with—*

22 (A) *the Nation, as authorized by the Con-*
 23 *tract;*

24 (B) *the Jicarilla Apache Nation, as author-*
 25 *ized by the settlement contract between the*

1 *United States and the Jicarilla Apache Tribe,*
 2 *authorized by the Jicarilla Apache Tribe Water*
 3 *Rights Settlement Act (Public Law 102–441; 106*
 4 *Stat. 2237); or*

5 *(C) an acquired alternate source of water,*
 6 *subject to approval of the Secretary and the*
 7 *State of New Mexico, acting through the New*
 8 *Mexico Interstate Stream Commission and the*
 9 *New Mexico State Engineer.*

10 *(c) JICARILLA APACHE NATION CONTRACT.—*

11 *(1) CONTRACT AUTHORIZATION.—Consistent*
 12 *with this Act, the Secretary is authorized to enter into*
 13 *a repayment contract with the Jicarilla Apache Na-*
 14 *tion that requires the Jicarilla Apache Nation—*

15 *(A) to repay, within a 50-year period, the*
 16 *share of any construction cost of the Jicarilla*
 17 *Apache Nation relating to the Project, with in-*
 18 *terest as provided under section 5; and*

19 *(B) consistent with section 303(g), to pay*
 20 *the operation, maintenance, and replacement*
 21 *costs of the Project that are allocable to the*
 22 *Jicarilla Apache Nation.*

23 *(2) CONTRACT PREPAYMENT.—*

24 *(A) IN GENERAL.—The contract authorized*
 25 *under paragraph (1) may allow the Jicarilla*

1 *Apache Nation to satisfy the repayment obliga-*
 2 *tion of the Jicarilla Apache Nation for construc-*
 3 *tion costs of the Project on the payment of the*
 4 *share of the Jicarilla Apache Nation prior to the*
 5 *initiation of construction.*

6 *(B) AMOUNT.—The amount of the share of*
 7 *Jicarilla Apache Nation described in subpara-*
 8 *graph (A) shall be determined by agreement be-*
 9 *tween the Secretary and the Jicarilla Apache*
 10 *Nation.*

11 *(C) REPAYMENT OBLIGATION.—Any repay-*
 12 *ment obligation established by the Secretary and*
 13 *the Jicarilla Apache Nation pursuant to sub-*
 14 *paragraph (A) shall be subject to a final cost al-*
 15 *location by the Secretary on project completion*
 16 *and to the limitations set forth in paragraph (3).*

17 *(3) SHARE OF CONSTRUCTION COSTS.—*

18 *(A) IN GENERAL.—Subject to subparagraph*
 19 *(B), the Secretary shall determine the share of*
 20 *the construction costs of the Project allocable to*
 21 *the Jicarilla Apache Nation and establish the*
 22 *percentage of the allocated construction costs of*
 23 *the Jicarilla Apache Nation that the Jicarilla*
 24 *Apache Nation shall be required to repay based*

1 *on the ability of the Jicarilla Apache Nation to*
 2 *pay.*

3 (B) *MINIMUM PERCENTAGE.—Notwith-*
 4 *standing subparagraph (A), the repayment obli-*
 5 *gation of the Jicarilla Apache Nation shall be at*
 6 *least 25 percent of the construction costs of the*
 7 *Project that are allocable to the Jicarilla Apache*
 8 *Nation, but shall in no event exceed 35 percent.*

9 (4) *EXCESS CONSTRUCTION COSTS.—Any con-*
 10 *struction costs of the Project allocable to the Jicarilla*
 11 *Apache Nation in excess of the repayment obligation*
 12 *of the Jicarilla Apache Nation as determined under*
 13 *paragraph (3), shall be nonreimbursable.*

14 (5) *GRANT FUNDS.—A grant from any other*
 15 *Federal source shall not be credited toward the share*
 16 *of the Jicarilla Apache Nation of construction costs.*

17 (6) *NAVAJO INDIAN IRRIGATION PROJECT*
 18 *COSTS.—The Jicarilla Apache Nation shall have no*
 19 *obligation to repay any Navajo Indian Irrigation*
 20 *Project construction costs that might otherwise be al-*
 21 *locable to the Jicarilla Apache Nation for use of the*
 22 *Navajo Indian Irrigation Project facilities to convey*
 23 *water to the Jicarilla Apache Nation, and any such*
 24 *costs shall be nonreimbursable.*

25 (d) *CAPITAL COST ALLOCATIONS.—*

1 (1) *IN GENERAL.*—For purposes of estimating
2 the capital repayment requirements of the Project
3 Participants under this section, the Secretary shall
4 review and, as appropriate, update the Draft Impact
5 Statement allocating capital construction costs for the
6 Project.

7 (2) *FINAL COST ALLOCATION.*—The repayment
8 contracts entered into with Project Participants
9 under this section shall require that the Secretary
10 perform a final cost allocation when construction of
11 the Project is determined to be substantially complete.

12 (3) *REPAYMENT OBLIGATION.*—The Secretary
13 shall determine the repayment obligation of the
14 Project Participants based on the final cost allocation
15 identifying reimbursable and nonreimbursable capital
16 costs of the Project consistent with this Act.

17 (e) *OPERATION, MAINTENANCE, AND REPLACEMENT*
18 *COST ALLOCATIONS.*—For purposes of determining the op-
19 eration, maintenance, and replacement obligations of the
20 Project Participants under this section, the Secretary shall
21 review and, as appropriate, update the Draft Impact State-
22 ment that allocates operation, maintenance, and replace-
23 ment costs for the Project.

24 (f) *TEMPORARY WAIVERS OF PAYMENTS.*—

1 (1) *IN GENERAL.*—On the date on which the Sec-
2 retary declares a section of the Project to be substan-
3 tially complete and delivery of water generated by
4 and through that section of the Project can be made
5 to the Nation, the Secretary may waive, for a period
6 of not more than 10 years, the operation, mainte-
7 nance, and replacement costs allocable to the Nation
8 for that section of the Project that the Secretary deter-
9 mines are in excess of the ability of the Nation to
10 pay.

11 (2) *SUBSEQUENT PAYMENT BY NATION.*—After a
12 waiver under paragraph (1), the Nation shall pay all
13 allocated operation, maintenance, and replacement
14 costs of that section of the Project.

15 (3) *PAYMENT BY UNITED STATES.*—Any oper-
16 ation, maintenance, or replacement costs waived by
17 the Secretary under paragraph (1) shall be paid by
18 the United States and shall be nonreimbursable.

19 (4) *EFFECT ON CONTRACTS.*—Failure of the Sec-
20 retary to waive costs under paragraph (1) because of
21 a lack of availability of Federal funding to pay the
22 costs under paragraph (3) shall not alter the obliga-
23 tions of the Nation or the United States under a re-
24 payment contract.

1 (5) *TERMINATION OF AUTHORITY.*—*The author-*
 2 *ity of the Secretary to waive costs under paragraph*
 3 *(1) with respect to a Project facility transferred to the*
 4 *Nation under section 302(f) shall terminate on the*
 5 *date on which the Project facility is transferred.*

6 (g) *PROJECT CONSTRUCTION COMMITTEE.*—*The Sec-*
 7 *retary shall facilitate the formation of a project construc-*
 8 *tion committee with the Project Participants and the State*
 9 *of New Mexico—*

10 (1) *to review cost factors and budgets for con-*
 11 *struction and operation and maintenance activities;*

12 (2) *to improve construction management through*
 13 *enhanced communication; and*

14 (3) *to seek additional ways to reduce overall*
 15 *Project costs.*

16 **SEC. 305. NAVAJO NATION MUNICIPAL PIPELINE.**

17 (a) *USE OF NAVAJO NATION PIPELINE.*—*In addition*
 18 *to use of the Navajo Nation Municipal Pipeline to convey*
 19 *the Animas-La Plata Project water of the Nation, the Na-*
 20 *tion may use the Navajo Nation Municipal Pipeline to con-*
 21 *vey non-Animas La Plata Project water for municipal and*
 22 *industrial purposes.*

23 (b) *CONVEYANCE OF TITLE TO PIPELINE.*—

24 (1) *IN GENERAL.*—*On completion of the Navajo*
 25 *Nation Municipal Pipeline, the Secretary may enter*

1 *into separate agreements with the City of Farm-*
 2 *ington, New Mexico and the Nation to convey title to*
 3 *each portion of the Navajo Nation Municipal Pipeline*
 4 *facility or section of the Pipeline to the City of Farm-*
 5 *ington and the Nation after execution of a Project op-*
 6 *erations agreement approved by the Secretary, the*
 7 *Nation, and the City of Farmington that sets forth*
 8 *any terms and conditions that the Secretary deter-*
 9 *mines are necessary.*

10 (2) *CONVEYANCE TO THE CITY OF FARMINGTON*
 11 *OR NAVAJO NATION.—In conveying title to the Navajo*
 12 *Nation Municipal Pipeline under this subsection, the*
 13 *Secretary shall convey—*

14 (A) *to the City of Farmington, the facilities*
 15 *and any land or interest in land acquired by the*
 16 *United States for the construction, operation,*
 17 *and maintenance of the Pipeline that are located*
 18 *within the corporate boundaries of the City; and*

19 (B) *to the Nation, the facilities and any*
 20 *land or interests in land acquired by the United*
 21 *States for the construction, operation, and main-*
 22 *tenance of the Pipeline that are located outside*
 23 *the corporate boundaries of the City of Farm-*
 24 *ington.*

1 (3) *EFFECT OF CONVEYANCE.*—*The conveyance*
 2 *of title to the Pipeline shall not affect the application*
 3 *of the Endangered Species Act of 1973 (16 U.S.C.*
 4 *1531 et seq.) relating to the use of water associated*
 5 *with the Animas-La Plata Project.*

6 (4) *LIABILITY.*—

7 (A) *IN GENERAL.*—*Effective on the date of*
 8 *the conveyance authorized by this subsection, the*
 9 *United States shall not be held liable by any*
 10 *court for damages of any kind arising out of any*
 11 *act, omission, or occurrence relating to the land,*
 12 *buildings, or facilities conveyed under this sub-*
 13 *section, other than damages caused by acts of*
 14 *negligence committed by the United States or by*
 15 *employees or agents of the United States prior to*
 16 *the date of conveyance.*

17 (B) *TORT CLAIMS.*—*Nothing in this sub-*
 18 *section increases the liability of the United*
 19 *States beyond the liability provided under chap-*
 20 *ter 171 of title 28, United States Code (com-*
 21 *monly known as the “Federal Tort Claims Act”).*

22 (5) *NOTICE OF PROPOSED CONVEYANCE.*—*Not*
 23 *later than 45 days before the date of a proposed con-*
 24 *veyance of title to the Pipeline, the Secretary shall*
 25 *submit to the Committee on Natural Resources of the*

1 *House of Representatives and the Committee on En-*
 2 *ergy and Natural Resources of the Senate, notice of*
 3 *the conveyance of the Pipeline.*

4 **SEC. 306. AUTHORIZATION OF CONJUNCTIVE USE WELLS.**

5 (a) CONJUNCTIVE GROUNDWATER DEVELOPMENT
 6 *PLAN.*—Not later than 1 year after the date of enactment
 7 *of this Act, the Nation, in consultation with the Secretary,*
 8 *shall complete a conjunctive groundwater development plan*
 9 *for the wells described in subsections (b) and (c).*

10 (b) WELLS IN THE SAN JUAN RIVER BASIN.—In ac-
 11 *cordance with the conjunctive groundwater development*
 12 *plan, the Secretary may construct or rehabilitate wells and*
 13 *related pipeline facilities to provide capacity for the diver-*
 14 *sion and distribution of not more than 1,670 acre-feet of*
 15 *groundwater in the San Juan River Basin in the State of*
 16 *New Mexico for municipal and domestic uses.*

17 (c) WELLS IN THE LITTLE COLORADO AND RIO
 18 *GRANDE BASINS.*—

19 (1) IN GENERAL.—In accordance with the
 20 *Project and conjunctive groundwater development*
 21 *plan for the Nation, the Secretary may construct or*
 22 *rehabilitate wells and related pipeline facilities to*
 23 *provide capacity for the diversion and distribution*
 24 *of—*

1 (A) *not more than 680 acre-feet of ground-*
 2 *water in the Little Colorado River Basin in the*
 3 *State of New Mexico;*

4 (B) *not more than 80 acre-feet of ground-*
 5 *water in the Rio Grande Basin in the State of*
 6 *New Mexico; and*

7 (C) *not more than 770 acre-feet of ground-*
 8 *water in the Little Colorado River Basin in the*
 9 *State of Arizona.*

10 (2) *USE.—Groundwater diverted and distributed*
 11 *under paragraph (1) shall be used for municipal and*
 12 *domestic uses.*

13 (d) *ACQUISITION OF LAND.—*

14 (1) *IN GENERAL.—Except as provided in para-*
 15 *graph (2), the Secretary may acquire any land or in-*
 16 *terest in land that is necessary for the construction,*
 17 *operation, and maintenance of the wells and related*
 18 *pipeline facilities authorized under subsections (b)*
 19 *and (c).*

20 (2) *LIMITATION.—Nothing in this subsection au-*
 21 *thorizes the Secretary to condemn water rights for the*
 22 *purposes described in paragraph (1).*

23 (e) *CONDITION.—The Secretary shall not commence*
 24 *any construction activity relating to the wells described in*

1 subsections (b) and (c) until the Secretary executes the
2 Agreement.

3 (f) CONVEYANCE OF WELLS.—

4 (1) IN GENERAL.—On the determination of the
5 Secretary that the wells and related facilities are sub-
6 stantially complete and delivery of water generated by
7 the wells can be made to the Nation, an agreement
8 with the Nation shall be entered into, to convey to the
9 Nation title to—

10 (A) any well or related pipeline facility
11 constructed or rehabilitated under subsections (a)
12 and (b) after the wells and related facilities have
13 been completed; and

14 (B) any land or interest in land acquired
15 by the United States for the construction, oper-
16 ation, and maintenance of the well or related
17 pipeline facility.

18 (2) OPERATION, MAINTENANCE, AND REPLACE-
19 MENT.—

20 (A) IN GENERAL.—The Secretary is author-
21 ized to pay operation and maintenance costs for
22 the wells and related pipeline facilities author-
23 ized under this subsection until title to the facili-
24 ties is conveyed to the Nation.

1 (B) *SUBSEQUENT ASSUMPTION BY NA-*
 2 *TION.—On completion of a conveyance of title*
 3 *under paragraph (1), the Nation shall assume all*
 4 *responsibility for the operation and maintenance*
 5 *of the well or related pipeline facility conveyed.*

6 (3) *EFFECT OF CONVEYANCE.—The conveyance*
 7 *of title to the Nation of the conjunctive use wells*
 8 *under paragraph (1) shall not affect the application*
 9 *of the Endangered Species Act of 1973 (16 U.S.C.*
 10 *1531 et seq.).*

11 (g) *USE OF PROJECT FACILITIES.—The capacities of*
 12 *the treatment facilities, main pipelines, and lateral pipe-*
 13 *lines of the Project authorized by section 302(b) may be used*
 14 *to treat and convey groundwater to Nation communities if*
 15 *the Nation provides for payment of the operation, mainte-*
 16 *nance, and replacement costs associated with the use of the*
 17 *facilities or pipelines.*

18 (h) *LIMITATIONS.—The diversion and use of ground-*
 19 *water by wells constructed or rehabilitated under this sec-*
 20 *tion shall be made in a manner consistent with applicable*
 21 *Federal and State law.*

22 **SEC. 307. SAN JUAN RIVER NAVAJO IRRIGATION PROJECTS.**

23 (a) *REHABILITATION.—Subject to subsection (b), the*
 24 *Secretary shall rehabilitate—*

1 (1) *the Fruitland-Cambridge Irrigation Project*
 2 *to serve not more than 3,335 acres of land, which*
 3 *shall be considered to be the total serviceable area of*
 4 *the project; and*

5 (2) *the Hogback-Cudei Irrigation Project to serve*
 6 *not more than 8,830 acres of land, which shall be con-*
 7 *sidered to be the total serviceable area of the project.*

8 (b) *CONDITION.—The Secretary shall not commence*
 9 *any construction activity relating to the rehabilitation of*
 10 *the Fruitland-Cambridge Irrigation Project or the Hogback-*
 11 *Cudei Irrigation Project under subsection (a) until the Sec-*
 12 *retary executes the Agreement.*

13 (c) *OPERATION, MAINTENANCE, AND REPLACEMENT*
 14 *OBLIGATION.—The Nation shall continue to be responsible*
 15 *for the operation, maintenance, and replacement of each fa-*
 16 *cility rehabilitated under this section.*

17 **SEC. 308. OTHER IRRIGATION PROJECTS.**

18 (a) *IN GENERAL.—Not later than 2 years after the*
 19 *date of enactment of this Act, the Secretary, in consultation*
 20 *with the State of New Mexico (acting through the Interstate*
 21 *Stream Commission) and the Non-Navajo Irrigation Dis-*
 22 *tricts that elect to participate, shall—*

23 (1) *conduct a study of Non-Navajo Irrigation*
 24 *District diversion and ditch facilities; and*

1 (2) *based on the study, identify and prioritize a*
2 *list of projects, with associated cost estimates, that are*
3 *recommended to be implemented to repair, rehabili-*
4 *tate, or reconstruct irrigation diversion and ditch fa-*
5 *cilities to improve water use efficiency.*

6 (b) *GRANTS.—The Secretary may provide grants to,*
7 *and enter into cooperative agreements with, the Non-Navajo*
8 *Irrigation Districts to plan, design, or otherwise implement*
9 *the projects identified under subsection (a)(2).*

10 (c) *COST-SHARING.—*

11 (1) *FEDERAL SHARE.—The Federal share of the*
12 *total cost of carrying out a project under subsection*
13 *(b) shall be not more than 50 percent, and shall be*
14 *nonreimbursable.*

15 (2) *FORM.—The non-Federal share required*
16 *under paragraph (1) may be in the form of in-kind*
17 *contributions, including the contribution of any valu-*
18 *able asset or service that the Secretary determines*
19 *would substantially contribute to a project carried out*
20 *under subsection (b).*

21 (3) *STATE CONTRIBUTION.—The Secretary may*
22 *accept from the State of New Mexico a partial or total*
23 *contribution toward the non-Federal share for a*
24 *project carried out under subsection (b).*

1 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) *AUTHORIZATION OF APPROPRIATIONS FOR NAV-*
3 *AJO-GALLUP WATER SUPPLY PROJECT.—*

4 (1) *IN GENERAL.—There is authorized to be ap-*
5 *propriated to the Secretary to plan, design, and con-*
6 *struct the Project \$870,000,000 for the period of fiscal*
7 *years 2009 through 2024, to remain available until*
8 *expended.*

9 (2) *ADJUSTMENTS.—The amount under para-*
10 *graph (1) shall be adjusted by such amounts as may*
11 *be required by reason of changes since 2007 in con-*
12 *struction costs, as indicated by engineering cost indi-*
13 *ces applicable to the types of construction involved.*

14 (3) *USE.—In addition to the uses authorized*
15 *under paragraph (1), amounts made available under*
16 *that paragraph may be used for the conduct of related*
17 *activities to comply with Federal environmental laws.*

18 (4) *OPERATION AND MAINTENANCE.—*

19 (A) *IN GENERAL.—There are authorized to*
20 *be appropriated such sums as are necessary to*
21 *operate and maintain the Project consistent with*
22 *this Act.*

23 (B) *EXPIRATION.—The authorization under*
24 *subparagraph (A) shall expire 10 years after the*
25 *year the Secretary declares the Project to be sub-*
26 *stantially complete.*

1 (b) *APPROPRIATIONS FOR CONJUNCTIVE USE*
2 *WELLS.*—

3 (1) *SAN JUAN WELLS.*—*There is authorized to be*
4 *appropriated to the Secretary for the construction or*
5 *rehabilitation and operation and maintenance of con-*
6 *junctive use wells under section 306(b) \$30,000,000,*
7 *as adjusted under paragraph (3), for the period of fis-*
8 *cal years 2009 through 2019.*

9 (2) *WELLS IN THE LITTLE COLORADO AND RIO*
10 *GRANDE BASINS.*—*There are authorized to be appro-*
11 *priated to the Secretary for the construction or reha-*
12 *bilitation and operation and maintenance of conjunc-*
13 *tive use wells under section 306(c) such sums as are*
14 *necessary for the period of fiscal years 2009 through*
15 *2024.*

16 (3) *ADJUSTMENTS.*—*The amount under para-*
17 *graph (1) shall be adjusted by such amounts as may*
18 *be required by reason of changes since 2008 in con-*
19 *struction costs, as indicated by engineering cost indi-*
20 *ces applicable to the types of construction or rehabili-*
21 *tation involved.*

22 (4) *NONREIMBURSABLE EXPENDITURES.*—
23 *Amounts made available under paragraphs (1) and*
24 *(2) shall be nonreimbursable to the United States.*

1 (5) *USE.*—*In addition to the uses authorized*
 2 *under paragraphs (1) and (2), amounts made avail-*
 3 *able under that paragraph may be used for the con-*
 4 *duct of related activities to comply with Federal envi-*
 5 *ronmental laws.*

6 (6) *LIMITATION.*—*Appropriations authorized*
 7 *under paragraph (1) shall not be used for operation*
 8 *or maintenance of any conjunctive use wells at a time*
 9 *in excess of 3 years after the well is declared substan-*
 10 *tially complete.*

11 (c) *SAN JUAN RIVER IRRIGATION PROJECTS.*—

12 (1) *IN GENERAL.*—*There are authorized to be ap-*
 13 *propriated to the Secretary—*

14 (A) *to carry out section 307(a)(1), not more*
 15 *than \$7,700,000, as adjusted under paragraph*
 16 *(2), for the period of fiscal years 2009 through*
 17 *2015, to remain available until expended; and*

18 (B) *to carry out section 307(a)(2), not more*
 19 *than \$15,400,000, as adjusted under paragraph*
 20 *(2), for the period of fiscal years 2009 through*
 21 *2018, to remain available until expended.*

22 (2) *ADJUSTMENT.*—*The amounts made available*
 23 *under paragraph (1) shall be adjusted by such*
 24 *amounts as may be required by reason of changes*
 25 *since January 1, 2004, in construction costs, as indi-*

1 *cated by engineering cost indices applicable to the*
 2 *types of construction involved in the rehabilitation.*

3 (3) *NONREIMBURSABLE EXPENDITURES.—*
 4 *Amounts made available under this subsection shall*
 5 *be nonreimbursable to the United States.*

6 (d) *OTHER IRRIGATION PROJECTS.—There are author-*
 7 *ized to be appropriated to the Secretary to carry out section*
 8 *308 \$11,000,000 for the period of fiscal years 2009 through*
 9 *2018.*

10 (e) *CULTURAL RESOURCES.—*

11 (1) *IN GENERAL.—The Secretary may use not*
 12 *more than 2 percent of amounts made available under*
 13 *subsections (a), (b), and (c) for the survey, recovery,*
 14 *protection, preservation, and display of archaeological*
 15 *resources in the area of a Project facility or conjunc-*
 16 *tive use well.*

17 (2) *NONREIMBURSABLE EXPENDITURES.—Any*
 18 *amounts made available under paragraph (1) shall be*
 19 *nonreimbursable.*

20 (f) *FISH AND WILDLIFE FACILITIES.—*

21 (1) *IN GENERAL.—In association with the devel-*
 22 *opment of the Project, the Secretary may use not*
 23 *more than 4 percent of amounts made available under*
 24 *subsections (a), (b), and (c) to purchase land and con-*
 25 *struct and maintain facilities to mitigate the loss of,*

1 *and improve conditions for the propagation of, fish*
 2 *and wildlife if any such purchase, construction, or*
 3 *maintenance will not affect the operation of any*
 4 *water project or use of water.*

5 (2) *NONREIMBURSABLE EXPENDITURES.—Any*
 6 *amounts expended under paragraph (1) shall be non-*
 7 *reimbursable.*

8 ***TITLE IV—NAVAJO NATION*** 9 ***WATER RIGHTS***

10 ***SEC. 401. AGREEMENT.***

11 (a) *AGREEMENT APPROVAL.—*

12 (1) *APPROVAL BY CONGRESS.—Except to the ex-*
 13 *tent that any provision of the Agreement conflicts*
 14 *with this Act, Congress approves, ratifies, and con-*
 15 *firms the Agreement (including any amendments to*
 16 *the Agreement that are executed to make the Agree-*
 17 *ment consistent with this Act).*

18 (2) *EXECUTION BY SECRETARY.—The Secretary*
 19 *shall enter into the Agreement to the extent that the*
 20 *Agreement does not conflict with this Act, includ-*
 21 *ing—*

22 (A) *any exhibits to the Agreement requiring*
 23 *the signature of the Secretary; and*

1 *(B) any amendments to the Agreement nec-*
 2 *essary to make the Agreement consistent with*
 3 *this Act.*

4 *(3) AUTHORITY OF SECRETARY.—The Secretary*
 5 *may carry out any action that the Secretary deter-*
 6 *mines is necessary or appropriate to implement the*
 7 *Agreement, the Contract, and this section.*

8 *(4) ADMINISTRATION OF NAVAJO RESERVOIR RE-*
 9 *LEASES.—The State of New Mexico may administer*
 10 *water that has been released from storage in Navajo*
 11 *Reservoir in accordance with subparagraph 9.1 of the*
 12 *Agreement.*

13 *(b) WATER AVAILABLE UNDER CONTRACT.—*

14 *(1) QUANTITIES OF WATER AVAILABLE.—*

15 *(A) IN GENERAL.—Water shall be made*
 16 *available annually under the Contract for*
 17 *projects in the State of New Mexico supplied*
 18 *from the Navajo Reservoir and the San Juan*
 19 *River (including tributaries of the River) under*
 20 *New Mexico State Engineer File Numbers 2849,*
 21 *2883, and 3215 in the quantities described in*
 22 *subparagraph (B).*

23 *(B) WATER QUANTITIES.—The quantities of*
 24 *water referred to in subparagraph (A) are as fol-*
 25 *lows:*

	<i>Diver- sion (acre- feet/ year)</i>	<i>Deple- tion (acre- feet/ year)</i>
<i>Navajo Indian Irrigation Project</i>	508,000	270,000
<i>Navajo-Gallup Water Supply Project</i>	22,650	20,780
<i>Animas-La Plata Project</i>	4,680	2,340
<i>Total</i>	535,330	293,120

1 (C) *MAXIMUM QUANTITY.*—A diversion of
2 water to the Nation under the Contract for a
3 project described in subparagraph (B) shall not
4 exceed the quantity of water necessary to supply
5 the amount of depletion for the project.

6 (D) *TERMS, CONDITIONS, AND LIMITA-*
7 *TIONS.*—The diversion and use of water under
8 the Contract shall be subject to and consistent
9 with the terms, conditions, and limitations of the
10 Agreement, this Act, and any other applicable
11 law.

12 (2) *AMENDMENTS TO CONTRACT.*—The Secretary,
13 with the consent of the Nation, may amend the Con-
14 tract if the Secretary determines that the amendment
15 is—

16 (A) *consistent with the Agreement; and*

17 (B) *in the interest of conserving water or*
18 *facilitating beneficial use by the Nation or a sub-*
19 *contractor of the Nation.*

1 (3) *RIGHTS OF THE NATION.*—*The Nation may,*
2 *under the Contract—*

3 (A) *use tail water, wastewater, and return*
4 *flows attributable to a use of the water by the*
5 *Nation or a subcontractor of the Nation if—*

6 (i) *the depletion of water does not ex-*
7 *ceed the quantities described in paragraph*
8 *(1); and*

9 (ii) *the use of tail water, wastewater,*
10 *or return flows is consistent with the terms,*
11 *conditions, and limitations of the Agree-*
12 *ment, and any other applicable law; and*

13 (B) *change a point of diversion, change a*
14 *purpose or place of use, and transfer a right for*
15 *depletion under this Act (except for a point of*
16 *diversion, purpose or place of use, or right for*
17 *depletion for use in the State of Arizona under*
18 *section 303(b)(2)(D)), to another use, purpose,*
19 *place, or depletion in the State of New Mexico to*
20 *meet a water resource or economic need of the*
21 *Nation if—*

22 (i) *the change or transfer is subject to*
23 *and consistent with the terms of the Agree-*
24 *ment, the Partial Final Decree described in*

1 paragraph 3.0 of the Agreement, the Con-
 2 tract, and any other applicable law; and

3 (ii) a change or transfer of water use
 4 by the Nation does not alter any obligation
 5 of the United States, the Nation, or another
 6 party to pay or repay project construction,
 7 operation, maintenance, or replacement
 8 costs under this Act and the Contract.

9 (c) SUBCONTRACTS.—

10 (1) IN GENERAL.—

11 (A) SUBCONTRACTS BETWEEN NATION AND
 12 THIRD PARTIES.—The Nation may enter into
 13 subcontracts for the delivery of Project water
 14 under the Contract to third parties for any bene-
 15 ficial use in the State of New Mexico (on or off
 16 land held by the United States in trust for the
 17 Nation or a member of the Nation or land held
 18 in fee by the Nation).

19 (B) APPROVAL REQUIRED.—A subcontract
 20 entered into under subparagraph (A) shall not be
 21 effective until approved by the Secretary in ac-
 22 cordance with this subsection and the Contract.

23 (C) SUBMITTAL.—The Nation shall submit
 24 to the Secretary for approval or disapproval any
 25 subcontract entered into under this subsection.

1 (D) *DEADLINE.*—*The Secretary shall ap-*
 2 *prove or disapprove a subcontract submitted to*
 3 *the Secretary under subparagraph (C) not later*
 4 *than the later of—*

5 *(i) the date that is 180 days after the*
 6 *date on which the subcontract is submitted*
 7 *to the Secretary; and*

8 *(ii) the date that is 60 days after the*
 9 *date on which a subcontractor complies*
 10 *with—*

11 *(I) section 102(2)(C) of the Na-*
 12 *tional Environmental Policy Act of*
 13 *1969 (42 U.S.C. 4332(2)(C)); and*

14 *(II) any other requirement of Fed-*
 15 *eral law.*

16 (E) *ENFORCEMENT.*—*A party to a sub-*
 17 *contract may enforce the deadline described in*
 18 *subparagraph (D) under section 1361 of title 28,*
 19 *United States Code.*

20 (F) *COMPLIANCE WITH OTHER LAW.*—*A*
 21 *subcontract described in subparagraph (A) shall*
 22 *comply with the Agreement, the Partial Final*
 23 *Decree described in paragraph 3.0 of the Agree-*
 24 *ment, and any other applicable law.*

1 (G) *NO LIABILITY.*—*The Secretary shall not*
 2 *be liable to any party, including the Nation, for*
 3 *any term of, or any loss or other detriment re-*
 4 *sulting from, a lease, contract, or other agree-*
 5 *ment entered into pursuant to this subsection.*

6 (2) *ALIENATION.*—

7 (A) *PERMANENT ALIENATION.*—*The Nation*
 8 *shall not permanently alienate any right granted*
 9 *to the Nation under the Contract.*

10 (B) *MAXIMUM TERM.*—*The term of any*
 11 *water use subcontract (including a renewal)*
 12 *under this subsection shall be not more than 99*
 13 *years.*

14 (3) *NONINTERCOURSE ACT COMPLIANCE.*—*This*
 15 *subsection—*

16 (A) *provides congressional authorization for*
 17 *the subcontracting rights of the Nation; and*

18 (B) *is deemed to fulfill any requirement*
 19 *that may be imposed by section 2116 of the Re-*
 20 *vised Statutes (25 U.S.C. 177).*

21 (4) *FORFEITURE.*—*The nonuse of the water sup-*
 22 *ply secured by a subcontractor of the Nation under*
 23 *this subsection shall not result in forfeiture, abandon-*
 24 *ment, relinquishment, or other loss of any part of a*

1 *right decreed to the Nation under the Contract or this*
 2 *section.*

3 (5) *NO PER CAPITA PAYMENTS.*—*No part of the*
 4 *revenue from a water use subcontract under this sub-*
 5 *section shall be distributed to any member of the Na-*
 6 *tion on a per capita basis.*

7 (d) *WATER LEASES NOT REQUIRING SUB-*
 8 *CONTRACTS.*—

9 (1) *AUTHORITY OF NATION.*—

10 (A) *IN GENERAL.*—*The Nation may lease,*
 11 *contract, or otherwise transfer to another party*
 12 *or to another purpose or place of use in the State*
 13 *of New Mexico (on or off land that is held by the*
 14 *United States in trust for the Nation or a mem-*
 15 *ber of the Nation or held in fee by the Nation)*
 16 *a water right that—*

17 (i) *is decreed to the Nation under the*
 18 *Agreement; and*

19 (ii) *is not subject to the Contract.*

20 (B) *COMPLIANCE WITH OTHER LAW.*—*In*
 21 *carrying out an action under this subsection, the*
 22 *Nation shall comply with the Agreement, the*
 23 *Partial Final Decree described in paragraph 3.0*
 24 *of the Agreement, the Supplemental Partial*

1 *Final Decree described in paragraph 4.0 of the*
2 *Agreement, and any other applicable law.*

3 (2) *ALIENATION; MAXIMUM TERM.*—

4 (A) *ALIENATION.*—*The Nation shall not*
5 *permanently alienate any right granted to the*
6 *Nation under the Agreement.*

7 (B) *MAXIMUM TERM.*—*The term of any*
8 *water use lease, contract, or other arrangement*
9 *(including a renewal) under this subsection shall*
10 *be not more than 99 years.*

11 (3) *NO LIABILITY.*—*The Secretary shall not be*
12 *liable to any party, including the Nation, for any*
13 *term of, or any loss or other detriment resulting from,*
14 *a lease, contract, or other agreement entered into pur-*
15 *suant to this subsection.*

16 (4) *NONINTERCOURSE ACT COMPLIANCE.*—*This*
17 *subsection—*

18 (A) *provides congressional authorization for*
19 *the lease, contracting, and transfer of any water*
20 *right described in paragraph (1)(A); and*

21 (B) *is deemed to fulfill any requirement*
22 *that may be imposed by the provisions of section*
23 *2116 of the Revised Statutes (25 U.S.C. 177).*

24 (5) *FORFEITURE.*—*The nonuse of a water right*
25 *of the Nation by a lessee or contractor to the Nation*

1 *under this subsection shall not result in forfeiture,*
 2 *abandonment, relinquishment, or other loss of any*
 3 *part of a right decreed to the Nation under the Con-*
 4 *tract or this section.*

5 *(e) NULLIFICATION.—*

6 *(1) DEADLINES.—*

7 *(A) IN GENERAL.—In carrying out this sec-*
 8 *tion, the following deadlines apply with respect*
 9 *to implementation of the Agreement:*

10 *(i) AGREEMENT.—Not later than De-*
 11 *cember 31, 2009, the Secretary shall execute*
 12 *the Agreement.*

13 *(ii) CONTRACT.—Not later than De-*
 14 *cember 31, 2009, the Secretary and the Na-*
 15 *tion shall execute the Contract.*

16 *(iii) PARTIAL FINAL DECREE.—Not*
 17 *later than December 31, 2012, the court in*
 18 *the stream adjudication shall have entered*
 19 *the Partial Final Decree described in para-*
 20 *graph 3.0 of the Agreement.*

21 *(iv) FRUITLAND-CAMBRIDGE IRRIGA-*
 22 *TION PROJECT.—Not later than December*
 23 *31, 2015, the rehabilitation construction of*
 24 *the Fruitland-Cambridge Irrigation Project*

1 *authorized under section 307(a)(1) shall be*
2 *completed.*

3 *(v) SUPPLEMENTAL PARTIAL FINAL DE-*
4 *CREE.—Not later than December 31, 2015,*
5 *the court in the stream adjudication shall*
6 *enter the Supplemental Partial Final De-*
7 *cree described in subparagraph 4.0 of the*
8 *Agreement.*

9 *(vi) HOGBACK-CUDEI IRRIGATION*
10 *PROJECT.—Not later than December 31,*
11 *2018, the rehabilitation construction of the*
12 *Hogback-Cudei Irrigation Project author-*
13 *ized under section 307(a)(2) shall be com-*
14 *pleted.*

15 *(vii) TRUST FUND.—Not later than*
16 *December 31, 2019, the United States shall*
17 *make all deposits into the Trust Fund*
18 *under section 402.*

19 *(viii) CONJUNCTIVE WELLS.—Not later*
20 *than December 31, 2019, the funds author-*
21 *ized to be appropriated under section*
22 *309(b)(1) for the conjunctive use wells au-*
23 *thorized under section 306(b) should be ap-*
24 *propriated.*

1 *(ix) NAVAJO-GALLUP WATER SUPPLY*
 2 *PROJECT.—Not later than December 31,*
 3 *2024, the construction of all Project facili-*
 4 *ties shall be completed.*

5 *(B) EXTENSION.—A deadline described in*
 6 *subparagraph (A) may be extended if the Nation,*
 7 *the United States (acting through the Secretary),*
 8 *and the State of New Mexico (acting through the*
 9 *New Mexico Interstate Stream Commission)*
 10 *agree that an extension is reasonably necessary.*

11 *(2) REVOCABILITY OF AGREEMENT, CONTRACT*
 12 *AND AUTHORIZATIONS.—*

13 *(A) PETITION.—If the Nation determines*
 14 *that a deadline described in paragraph (1)(A) is*
 15 *not substantially met, the Nation may submit to*
 16 *the court in the stream adjudication a petition*
 17 *to enter an order terminating the Agreement and*
 18 *Contract.*

19 *(B) TERMINATION.—On issuance of an*
 20 *order to terminate the Agreement and Contract*
 21 *under subparagraph (A)—*

22 *(i) the Trust Fund shall be terminated;*
 23 *(ii) the balance of the Trust Fund shall*
 24 *be deposited in the general fund of the*
 25 *Treasury;*

1 (iii) the authorizations for construction
 2 and rehabilitation of water projects under
 3 this Act shall be revoked and any Federal
 4 activity related to that construction and re-
 5 habilitation shall be suspended; and

6 (iv) this title and titles I and III shall
 7 be null and void.

8 (3) CONDITIONS NOT CAUSING NULLIFICATION OF
 9 SETTLEMENT.—

10 (A) IN GENERAL.—If a condition described
 11 in subparagraph (B) occurs, the Agreement and
 12 Contract shall not be nullified or terminated.

13 (B) CONDITIONS.—The conditions referred
 14 to in subparagraph (A) are as follows:

15 (i) A lack of right to divert at the ca-
 16 pacities of conjunctive use wells constructed
 17 or rehabilitated under section 306.

18 (ii) A failure—

19 (I) to determine or resolve an ac-
 20 counting of the use of water under this
 21 Act in the State of Arizona;

22 (II) to obtain a necessary water
 23 right for the consumptive use of water
 24 in Arizona;

1 (III) to contract for the delivery of
2 water for use in Arizona; or

3 (IV) to construct and operate a
4 lateral facility to deliver water to a
5 community of the Nation in Arizona,
6 under the Project.

7 (f) *EFFECT ON RIGHTS OF INDIAN TRIBES.*—

8 (1) *IN GENERAL.*—Except as provided in para-
9 graph (2), nothing in the Agreement, the Contract, or
10 this section quantifies or adversely affects the land
11 and water rights, or claims or entitlements to water,
12 of any Indian tribe or community other than the
13 rights, claims, or entitlements of the Nation in, to,
14 and from the San Juan River Basin in the State of
15 New Mexico.

16 (2) *EXCEPTION.*—The right of the Nation to use
17 water under water rights the Nation has in other
18 river basins in the State of New Mexico shall be
19 forborne to the extent that the Nation supplies the
20 uses for which the water rights exist by diversions of
21 water from the San Juan River Basin under the
22 Project consistent with subparagraph 9.13 of the
23 Agreement.

1 **SEC. 402. TRUST FUND.**

2 (a) *ESTABLISHMENT.*—*There is established in the*
 3 *Treasury a fund to be known as the “Navajo Nation Water*
 4 *Resources Development Trust Fund”, consisting of—*

5 (1) *such amounts as are appropriated to the*
 6 *Trust Fund under subsection (f); and*

7 (2) *any interest earned on investment of*
 8 *amounts in the Trust Fund under subsection (d).*

9 (b) *USE OF FUNDS.*—*The Nation may use amounts*
 10 *in the Trust Fund—*

11 (1) *to investigate, construct, operate, maintain,*
 12 *or replace water project facilities, including facilities*
 13 *conveyed to the Nation under this Act and facilities*
 14 *owned by the United States for which the Nation is*
 15 *responsible for operation, maintenance, and replace-*
 16 *ment costs; and*

17 (2) *to investigate, implement, or improve a*
 18 *water conservation measure (including a metering or*
 19 *monitoring activity) necessary for the Nation to make*
 20 *use of a water right of the Nation under the Agree-*
 21 *ment.*

22 (c) *MANAGEMENT.*—*The Secretary shall manage the*
 23 *Trust Fund, invest amounts in the Trust Fund, and make*
 24 *amounts available from the Trust Fund for distribution to*
 25 *the Nation in accordance with the American Indian Trust*

1 *Fund Management Reform Act of 1994 (25 U.S.C. 4001 et*
 2 *seq.).*

3 (d) *INVESTMENT OF THE TRUST FUND.*—*The Sec-*
 4 *retary shall invest amounts in the Trust Fund in accord-*
 5 *ance with—*

6 (1) *the Act of April 1, 1880 (25 U.S.C. 161);*

7 (2) *the first section of the Act of June 24, 1938*
 8 *(25 U.S.C. 162a); and*

9 (3) *the American Indian Trust Fund Manage-*
 10 *ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).*

11 (e) *CONDITIONS FOR EXPENDITURES AND WITH-*
 12 *DRAWALS.*—

13 (1) *TRIBAL MANAGEMENT PLAN.*—

14 (A) *IN GENERAL.*—*Subject to paragraph*
 15 *(7), on approval by the Secretary of a tribal*
 16 *management plan in accordance with the Amer-*
 17 *ican Indian Trust Fund Management Reform*
 18 *Act of 1994 (25 U.S.C. 4001 et seq.), the Nation*
 19 *may withdraw all or a portion of the amounts*
 20 *in the Trust Fund.*

21 (B) *REQUIREMENTS.*—*In addition to any*
 22 *requirements under the American Indian Trust*
 23 *Fund Management Reform Act of 1994 (25*
 24 *U.S.C. 4001 et seq.), the tribal management plan*
 25 *shall require that the Nation only use amounts*

1 *in the Trust Fund for the purposes described in*
 2 *subsection (b), including the identification of*
 3 *water conservation measures to be implemented*
 4 *in association with the agricultural water use of*
 5 *the Nation.*

6 (2) *ENFORCEMENT.*—*The Secretary may take ju-*
 7 *dicial or administrative action to enforce the provi-*
 8 *sions of any tribal management plan to ensure that*
 9 *any amounts withdrawn from the Trust Fund are*
 10 *used in accordance with this Act.*

11 (3) *NO LIABILITY.*—*Neither the Secretary nor the*
 12 *Secretary of the Treasury shall be liable for the ex-*
 13 *penditure or investment of any amounts withdrawn*
 14 *from the Trust Fund by the Nation.*

15 (4) *EXPENDITURE PLAN.*—

16 (A) *IN GENERAL.*—*The Nation shall submit*
 17 *to the Secretary for approval an expenditure*
 18 *plan for any portion of the amounts in the Trust*
 19 *Fund made available under this section that the*
 20 *Nation does not withdraw under this subsection.*

21 (B) *DESCRIPTION.*—*The expenditure plan*
 22 *shall describe the manner in which, and the pur-*
 23 *poses for which, funds of the Nation remaining*
 24 *in the Trust Fund will be used.*

1 (C) *APPROVAL.*—*On receipt of an expendi-*
 2 *ture plan under subparagraph (A), the Secretary*
 3 *shall approve the plan if the Secretary deter-*
 4 *mines that the plan is reasonable and consistent*
 5 *with this Act.*

6 (5) *ANNUAL REPORT.*—*The Nation shall submit*
 7 *to the Secretary an annual report that describes any*
 8 *expenditures from the Trust Fund during the year*
 9 *covered by the report.*

10 (6) *LIMITATION.*—*No portion of the amounts in*
 11 *the Trust Fund shall be distributed to any Nation*
 12 *member on a per capita basis.*

13 (7) *CONDITIONS.*—*Any amount authorized to be*
 14 *appropriated to the Trust Fund under subsection (f)*
 15 *shall not be available for expenditure or with-*
 16 *drawal—*

17 (A) *before December 31, 2019; and*

18 (B) *until the date on which the court in the*
 19 *stream adjudication has entered—*

20 (i) *the Partial Final Decree; and*

21 (ii) *the Supplemental Partial Final*
 22 *Decree.*

23 (f) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
 24 *authorized to be appropriated for deposit in the Trust*
 25 *Fund—*

1 (1) \$6,000,000 for each of fiscal years 2009
2 through 2013; and

3 (2) \$4,000,000 for each of fiscal years 2014
4 through 2018.

5 **SEC. 403. WAIVERS AND RELEASES.**

6 (a) *CLAIMS BY THE NATION AND THE UNITED*
7 *STATES.*—*The Nation, on behalf of itself and members of*
8 *the Nation (other than members in the capacity of the mem-*
9 *bers as allottees), and the United States, acting through the*
10 *Secretary and in the capacity of the United States as trust-*
11 *ee for the Nation, shall each execute a waiver and release*
12 *of—*

13 (1) *all claims for water rights in, or for waters*
14 *of, the San Juan River Basin in the State of New*
15 *Mexico that the Nation, or the United States as trust-*
16 *ee for the Nation, asserted, or could have asserted, in*
17 *the San Juan River adjudication or in any other*
18 *court proceeding;*

19 (2) *all claims that the Nation, or the United*
20 *States as trustee for the Nation, has asserted or could*
21 *assert for any damage, loss, or injury to water rights*
22 *or claims of interference, diversion, or taking of water*
23 *in the San Juan Basin in the State of New Mexico*
24 *that, regardless of whether the damage, loss, or injury*
25 *is unanticipated, unexpected, or unknown—*

1 (A) accrued at any time before or on the ef-
 2 fective date of the waiver and release under sub-
 3 section (d); and

4 (B) may or may not be more numerous or
 5 more serious than is understood or expected; and

6 (3) all claims of any damage, loss, or injury or
 7 for injunctive or other relief because of the condition
 8 of or changes in water quality related to, or arising
 9 out of, the exercise of water rights.

10 (b) CLAIMS BY THE NATION AGAINST THE UNITED
 11 STATES.—The Nation, on behalf of itself and its members
 12 (other than members in the capacity of the members as
 13 allottees), shall execute a waiver and release of—

14 (1) all causes of action that the Nation or the
 15 members of the Nation (other than members in the ca-
 16 pacity of the members as allottees) may have against
 17 the United States or any agencies or employees of the
 18 United States, arising out of claims for water rights
 19 in, or waters of, the San Juan River Basin in the
 20 State of New Mexico that the United States asserted,
 21 or could have asserted, in the stream adjudication or
 22 other court proceeding;

23 (2) all claims for any damage, loss, or injury to
 24 water rights, claims of interference, diversion or tak-
 25 ing of water, or failure to protect, acquire, or develop

1 *water or water rights for land within the San Juan*
 2 *Basin in the State of New Mexico that, regardless*
 3 *whether the damage, loss, or injury is unanticipated,*
 4 *unexpected, or unknown—*

5 *(A) accrued at any time before or on the ef-*
 6 *fective date of the waiver and release under sub-*
 7 *section (d); and*

8 *(B) may or may not be more numerous or*
 9 *more serious than is understood or expected; and*

10 *(3) all claims arising out of, resulting from, or*
 11 *relating in any manner to the negotiation, execution*
 12 *or adoption of the Agreement, the Contract, or this*
 13 *Act (including any specific terms and provisions of*
 14 *the Agreement, the Contract, or this Act) that the Na-*
 15 *tion may have against the United States or any agen-*
 16 *cies or employees of the United States.*

17 *(c) RESERVATION OF CLAIMS.—Notwithstanding sub-*
 18 *sections (a) and (b), the Nation and the members of the*
 19 *Nation (including members in the capacity of the members*
 20 *as allottees) and the United States, as trustee for the Nation*
 21 *and allottees, shall retain—*

22 *(1) all claims for water rights or injuries to*
 23 *water rights arising out of activities occurring outside*
 24 *the San Juan River Basin in the State of New Mex-*

1 *ico, subject to paragraphs 8.0, 9.3, 9.12, 9.13 and*
 2 *13.9 of the Agreement;*

3 *(2) all claims for enforcement of the Agreement,*
 4 *the Contract, the Partial Final Decree, the Supple-*
 5 *mental Partial Final Decree, or this Act, through any*
 6 *legal and equitable remedies available in any court of*
 7 *competent jurisdiction;*

8 *(3) all rights to use and protect water rights ac-*
 9 *quired pursuant to State law after the effective date*
 10 *of the waivers and releases described in subsection (d);*

11 *(4) all claims relating to activities affecting the*
 12 *quality of water not related to the exercise of water*
 13 *rights; and*

14 *(5) all rights, remedies, privileges, immunities,*
 15 *and powers not specifically waived and released*
 16 *under the terms of the Agreement or this Act.*

17 *(d) EFFECTIVE DATE.—*

18 *(1) IN GENERAL.—The waivers and releases de-*
 19 *scribed in subsection (a) shall be effective on the date*
 20 *on which the Secretary publishes in the Federal Reg-*
 21 *ister a statement of findings documenting that each of*
 22 *the deadlines described in section 401(e)(1) have been*
 23 *met.*

24 *(2) DEADLINE.—If the deadlines in section*
 25 *401(e)(1)(A) have not been met by the later of March*

1 1, 2025, or the date of any extension under section
2 401(e)(1)(B)—

3 (A) the waivers and releases described in
4 subsection (a) shall be of no effect; and

5 (B) section 401(e)(2)(B) shall apply.

6 **SEC. 404. WATER RIGHTS HELD IN TRUST.**

7 A tribal water right adjudicated and described in
8 paragraph 3.0 of the Partial Final Decree and in para-
9 graph 3.0 of the Supplemental Partial Final Decree shall
10 be held in trust by the United States on behalf of the Nation.

Calendar No. 839

110TH CONGRESS
2^D Session

S. 1171

[Report No. 110-401]

A BILL

To amend the Colorado River Storage Project Act and Public Law 87-483 to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, and for other purposes.

JUNE 25, 2008

Reported with an amendment